REPORT IV
FIRST DISCUSSION

International Labour Conference

EIGHTEENTH SESSION
GENEVA, 1934

MAINTENANCE OF THE RIGHTS IN COURSE OF ACQUISITION AND THE ACQUIRED RIGHTS OF MIGRANT WORKERS UNDER INVALIDITY, OLD-AGE AND WIDOWS' AND ORPHANS' INSURANCE

Fourth Item on the Agenda

GENEVA
INTERNATIONAL LABOUR OFFICE
1934

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MAINTENANCE OF MIGRANTS' PENSION INSURANCE RIGHTS

REPORT IV
FIRST DISCUSSION

International Labour Conference

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At its Seventeenth Session (June-July 1933) the International Labour Conference adopted six Draft Conventions on invalidity, old-age and widows' and orphans' insurance. Three deal respectively with invalidity insurance, old-age insurance, and widows' and orphans' insurance for persons employed in industrial and commercial undertakings or in the liberal professions and for outworkers and domestic servants; and the remaining three with the same three branches of insurance for persons employed in agricultural undertakings.

These six Draft Conventions contain provisions governing scope, benefits, financial resources, insurance institutions, supervision, settlement of disputes, the position of foreigners, etc. They do not, however, cover the maintenance of migrant workers' rights.

A preliminary enquiry into this question had taken place in 1932; the Conference took note of the incomplete data obtained from the consultation of Governments on that occasion and decided, in view of the number and complexity of the problems which the drafting of an international scheme for the maintenance of these rights would raise, that the best course was to postpone the study of the question until a later session. Accordingly, in virtue of the power conferred on it by Article 402, paragraph 3, of Part XIII of the Treaty of Peace, it decided to place the following item on the agenda of the 1934 Session, for first discussion:

> Maintenance of acquired rights and rights in course of acquisition under invalidity, old-age and widows' and orphans' insurance, on behalf of workers who transfer their residence from one country to another.

In order to provide the Conference with full material on which to base its deliberations, the Office has prepared this report analysing those provisions of national legislation and bilateral

treaties which deal with the maintenance of migrant workers' rights. The report is divided into four parts:

First part: Maintenance of rights in course of acquisition.
Second part: Maintenance of acquired rights and residence abroad.
Third part: Conditions of application of treaties.
Fourth part: Conclusions, and list of points on which the Office proposes that Governments be consulted.

PART I

MAINTENANCE OF RIGHTS IN COURSE OF ACQUISITION

INTRODUCTION

§1. — The Problem

In almost all national schemes for compulsory invalidity, old-age and widows' and orphans' insurance, the right to benefit is conditioned as follows: first of all the insured person must have completed a qualifying period, and secondly the validity of his contributions must have been maintained up to the happening of the event insured against.

These essential features of national schemes are usually, in their application, extremely disadvantageous to workers who leave a country in which they have been insured in order to seek employment in another. As a rule such a worker cannot retain the status of an insured person in the country which he has left, nor can he make good any claim against the institution with which he was formerly insured. All the contributions which he has paid, or his employer has paid for him, to that institution are lost, even if he had completed the qualifying period and had been contributing for many years.

As a rule too, if there is a compulsory insurance scheme in the country to which he migrates and if he enters an occupation covered by this scheme, he is obliged to be insured under it and must fulfil all the conditions on which the legislation of that country makes the payment of benefit depend. Thus the obligations of the new insurance institution towards him and *vice versa* are assessed without any regard to his position under the institution which insured him in the country he has left.

A worker who has been compulsorily insured (and paid contributions) in two or three countries for many years may thus find himself without any claim to old-age or invalidity benefit or have to leave his widow and children without the right to pensions.

Owing to the very great number of workers who migrated during the last half century, such cases are extremely frequent, and a strict application of the territorial principle which dominates national compulsory pension schemes involves flagrant injustice to many migrant workers. On the one hand, though the compulsory pension scheme of a country obliges them to pay contributions (which are deducted from their wages), they may as a result of emigration not be in a position to claim the benefits which are their equitable *quid pro quo;* yet on the other hand they cannot be considered responsible for the state of the labour market which compels them, quite irrespective of personal wishes or preferences, to change their country of residence in order to live.

The attempts of national schemes to solve the problem of migrants' pension rights still in course of acquisition are described in the following paragraphs. It will be seen that they are not satisfactory. International solutions will then be considered.

§ 2. — Methods Adopted in National Schemes : Their Insufficiency

In order to provide for the maintenance of rights in course of acquisition, national schemes have to find some solution for the problems of the qualifying period and the maintenance of the validity of contributions.

Qualifying Period

The qualifying period is intended, according to the scheme, either to prevent persons from abusing insurance by becoming insured with the sole object of obtaining benefit, or to make the value of the contributions paid (that is, the length of the period of saving and the amount saved) to some extent proportionate to the value of the benefits guaranteed. The provisions governing the qualifying period vary from country to country, the payment of benefit being conditional either on the completion of a minimum period of insurance or on the payment of a minimum number of contributions; some schemes even require fulfilment of both these conditions. If a minimum number of contributions is prescribed,

these must in some schemes fall during a period immediately preceding the happening of the event insured against, while in others they may have been paid at any time since the worker began to be insured.

The payment of benefit depends upon the completion of a qualifying period in all schemes, except a very small number under which the amount of the pension depends solely on the capital formed by the accumulation of the contributions paid, and a still smaller number which impose a maximum age for entry into insurance which is far below the pensionable age.

When a worker leaves one country in order to work in another, and is obliged to insure in the second country, he has to go through the whole qualifying period as provided under the scheme in force there. The insurance authorities in the second country cannot free him from this obligation without prejudicing the comparative position of other workers similarly insured. Thus national laws provide no solution, and since the qualifying periods actually laid down are in many cases very long (in old-age insurance, from five to twenty-five or even thirty years), the migrating worker is exposed to the loss of the benefits which should result from his economy during what may perhaps be the greater part of his occupational life. An international solution of this difficulty is urgently required.

Maintenance of Validity of Contributions

An insured person who has completed the qualifying period is entitled to a pension on being affected by invalidity or reaching old age, and, if he dies, leaves his surviving relations the right to specified benefit; but the payment of benefit is as a rule dependent on whether the worker concerned has the status of insured person when the event insured against happens, and further, in the very numerous schemes under which benefit is wholly or partly independent of the number and rate of the contributions paid, on whether contributions have been regular, or sometimes on whether they have attained a certain degree of frequency, during the insured person's whole career. If payment is interrupted or if the number of contributions paid is insufficient, the contributions are, under almost all schemes, invalidated and the rights in course of acquisition are forfeited either immediately or on expiry of a certain period after the last payment.

The loss of validity of the contributions paid and the forfeiting

of rights in course of acquisition naturally affect the worker who migrates and so ceases to be employed in an insurable occupation in the country he is leaving, for he is then required to start again from the beginning and acquire new rights in the country of immigration.

Nevertheless, there are national schemes which give the migrant a chance of maintaining rights in course of acquisition, at least to a certain extent; the two methods by which this is done are the continuation fee and the voluntary insurance scheme.

Continuation Fees

A worker who leaves a country may keep the status of insured person and maintain his rights by periodically paying a continuation fee, generally fairly small, to the institution which previously insured him. This method of maintaining the validity of the contributions paid, even in case of emigration, is in force in not more than a few schemes, mostly for the insurance of miners against invalidity, old age and death. Permission to maintain rights by this means is restricted to insured persons who have paid a certain number of contributions, sometimes considerable, before emigrating; an insured person who wishes to maintain his rights must begin to pay continuation fees either immediately or within a short period after paying his last contribution. Lastly, these payments must be regular, and even a short interruption invalidates the contributions previously paid.

The continuation fee is small enough to be within the means of the migrating worker, even if he is required to insure in the country of immigration.

Nevertheless, the continuation fee system, even if introduced in all countries, would not be an adequate solution of the problem, for it does not establish any relation between the various phases of the worker's career, nor between the insurance institutions with which he has been insured in different countries. Workers who have not completed the general qualifying period provided for in the scheme of the original country cannot acquire rights by paying a continuation fee after they have emigrated; and even if they have completed the qualifying period, benefit may be refused if they have not paid a sufficient number of contributions. Moreover, though payment of the fee secures maintenance of the rights already acquired on emigration, it does not increase these rights, and the contributions paid in the country of emigration will not

be taken into consideration for the acquisition of the rights under any insurance scheme in the country of immigration. Despite continuation fees, the discontinuity between the old and the new schemes remains with all its grave drawbacks.

Voluntary Insurance

In a number of invalidity, old-age and widows' and orphans' insurance schemes it is provided that the insured person who ceases to be compulsorily insurable may, on fulfilment of certain conditions, be permitted to insure on a voluntary basis and thus maintain the validity of the contributions already paid and the rights in course of acquisition. The conditions are somewhat strict. In some cases only nationals of the country concerned may so insure, in others only persons who continue to reside in the country—a condition which robs the scheme of its value to emigrants—and in others again (though these cases are rare) a medical examination must be undergone and insurance is only allowed if the result is satisfactory.

Further, as in the case of the continuation fee, voluntary insurance is restricted to persons who have paid a certain minimum number of contributions, which may in some instances mean ten years' insurance. An insured person who wishes to continue to insure on a voluntary basis must make his application or notify his decision either immediately, or before the expiry of a short period, after he ceases to be compulsorily insured; the voluntary insurance contributions must be regularly paid, otherwise the rights in course of acquisition are forfeited. Lastly, in a number of countries benefits are not payable to persons resident abroad.

The practical result of all these limitations is that a large number of migrant workers are excluded from voluntary insurance; but in any case, even for those who are able to take part in it, voluntary insurance can hardly be considered as an efficient method of maintaining rights in course of acquisition.

The immigrant no longer has an employer in the country he has left, and cannot therefore benefit by the employer's contribution, which is of great importance in almost all schemes. He has thus to bear the double burden of employer's and worker's contribution himself, being either compelled to do so by law or induced to make the effort by the desire to qualify for the normal benefits of the scheme to which he continues to contribute.

But in most cases the wages which he earns in the country of

immigration are not enough to allow him to make this double payment, and either he pays a reduced contribution and is thus not entitled to full and sufficient benefit when the event insured against happens, or he abandons the idea of voluntary insurance and with it the whole of the rights arising out of the contributions he has paid.

The difficulty of maintaining voluntary insurance in the country of emigration is all the greater if the worker is obliged to insure in the country of immigration, in which case he has compulsory contributions to make there, and, barring the exceptional cases of very high remuneration, finds it materially impossible to contribute to two institutions at once. If he has worked in three or even four countries, it is obviously impossible for him to maintain his rights under each of the schemes to which he has contributed; and in any case, double insurance is never a commendable system.

If, then, account is also taken of the practical difficulty of sending small sums of money at short intervals from one country to another, it must be admitted that there are formidable obstacles in the way of maintaining rights in course of acquisition by means of voluntary insurance and that such a system can have only a very limited application.

§ 3. — International Solutions

The inadequacy of the solutions offered by national schemes unilaterally cannot be denied, and for some years past efforts have therefore been made towards an international solution of the problem, either by the conclusion of bilateral treaties between States or by the drafting of a multilateral convention which would establish an effective international scheme for the maintenance of rights in course of acquisition.

In the three following chapters, the international solutions which are either in force or practicable will be studied. These are:

I. The transfer of contributions to a single insurance institution;

II. The transfer of the capital representing rights in course of acquisition;

III. The maintenance of rights in each country and the sharing of liability for benefits by the insurance institutions of the countries concerned.

CHAPTER I

MAINTENANCE OF RIGHTS IN COURSE OF ACQUISITION BY TRANSFER OF CONTRIBUTIONS TO SINGLE INSURANCE INSTITUTION

If this method is adopted, the institution to which contributions are to be transferred must be already determined when the worker first comes under compulsory insurance. The worker is insured with this institution alone and not with the insurance institutions of the other countries in which he may be employed; the latter simply collect and hand over his contributions, and have no obligation towards him with regard to benefits. If the event insured against happens, the appropriate benefit must be paid by the institution to which contributions have been paid or transferred during the whole of the insured person's career, in accordance with the legislation it administers.

If such a system is to be put into force, a number of other problems must be solved. The most important of these are the following: the choice of the institution to which the contributions are to be transferred; the intervals at which the transfer is to be made; the amount of the contributions to be transferred; and the computation of the benefit to be paid by the institution which receives the contributions.

§ 1. — Choice of Institution to which Contributions are to be Transferred

Contributions may be transferred to an insurance institution either in the native country of the worker concerned or in the country in which he is for the first time compulsorily insured.

Transfer to Institution in Native Country

It might be supposed that a worker who had been employed abroad would in most cases return to his native country and that

if he died, his widow and children would also most probably return thither. The native country is the natural refuge of those in need, and insured persons may there obtain the full benefits of insurance legislation without being affected by the many disabilities to which foreigners are still in many countries exposed, and also most easily take advantage of public relief for themselves and their families.

But the above supposition is by no means always borne out in actual fact, for experience shows that a large number of workers who have lived abroad for many years do not return to their native country even when they become incapable of work. Instead they remain established in the country where they have been employed so long and where they are often naturalised. The position of the widow and children is frequently the same, particularly when the widow is a native of the country of immigration and the children have been born abroad. It would therefore not be convenient to transfer contributions to an institution in a country to which the insured person will perhaps never return.

Transfer to Institution in Country of First Insurance

In a very large number of cases this procedure would coincide with that just described, for most workers enter their first insurable employment in their native country. In so far as they do not, the value of this second procedure depends on the proportion of cases in which the worker remains in the country of immigration where he was first compulsorily insured; and there is no reason to assume that he will establish himself permanently in that country.

Therefore, despite the disadvantages which may be entailed, it seems preferable to choose an institution in the insured person's native country as the recipient of all his contributions.

§ 2. — Intervals at which Contributions are Transferred

The transfer of contributions may take place at short or long intervals.

If the intervals are short (e.g. every month), the insurance institution to which the contributions are transferred may use them—i.e. invest them and draw the interest without delay, the procedure being similar to that observed when the insured person is living in the country where this institution is situated.

If the intervals are long (e.g. every six months or year), the

administrative and financial operations which must be undertaken by the two institutions (sender and recipient) are simple and the costs are low; but the recipient institution loses the extra interest which would have been paid if the contribution had been transferred and invested earlier.

Quarterly transfers might prove a satisfactory compromise between these alternatives.

§ 3. — Amount of Contributions Transferred

The sum transferred should obviously include the worker's and employer's contribution, and presumably that of the State as well whenever this is a regular pecuniary contribution.

The matter is much less simple when the State contribution takes the form either of an inclusive subsidy on behalf of insured persons collectively or of a supplement to benefit or to certain forms of benefit paid after the happening of the event insured against. In such cases it would be very difficult to determine what amount should be transferred on account of insured persons individually.

§ 4. — Computation of Benefit

The contributions transferred, changed into the currency of the country in which the recipient institution is situated, mean the acquisition by the insured person of benefit rights conforming with the scales applied by the institution and with the legislation which governs it.

If these contributions are too small to permit the placing of the insured person even in the lowest class of contributors provided for in the scheme of the recipient institution, the insured person will have to pay a supplementary rate.

If, on the other hand, the contributions are above the upper limit of the highest class of contributors provided for in this scheme, the institution may either refund the difference to the insured person or regard him as having taken out a supplementary policy.

§ 5. — Advantages and Disadvantages

The great advantage of the method described above is that, when benefits have to be determined, the insured person is dealing with a single institution and a single scheme.

On the other hand, it has a number of serious drawbacks.

(*a*) It is very difficult to choose the institution to which contributions are to be transferred, for there is no means of knowing in advance where the insured person (or his widow and children) will take up permanent residence.

(*b*) In practice, only the contributions proper can be transferred, and the insured person will thus lose the advantage of any State supplement to benefit which may be allowed in the country or countries where he has worked. This may be a most serious loss, for in many countries a very large proportion of the value of benefits arises from sources other than employers' and workers' contributions.

(*c*) Having paid contributions in a number of countries, and so under a number of schemes, the insured person will receive the benefits laid down by the scheme in force in a country where, in many cases, he has lived very little if at all, and to which neither he nor his widow and children may return on the happening of an event insured against. The institution which has received the contributions may therefore have to pay a pension to a person living abroad or transfer to such person the capital corresponding with the contributions which it has received and administered.

Such a system is perhaps applicable in the case of seasonal workers who leave their own country to work in another for a limited period of the year and remain as a rule attached to an insurance institution in their own country. The country which they enter in search of seasonal employment usually exempts such workers from liability to insurance. But such a procedure may unduly favour the employment of foreign seasonal workers; and if for this reason it is considered advisable to require such workers and their employers to pay contributions, despite the fact that the temporary nature of the employment will certainly prevent the worker from benefiting under a long-term insurance scheme, the contributions will have to be transferred to the institution to which they have remained attached in their native country. In this way they would find it easier to maintain their rights as against this institution.

The method of contribution transfer has actually been adopted in a single treaty only—the German-Italian Convention of 1912.

§ 6. — Convention between Germany and Italy relating to Workers' Insurance, dated 31 July 1912

The Convention provides that contributions under the German invalidity, old-age and widows' and orphans' insurance scheme must be paid for Italian subjects residing in Germany as for Germans, even when the former are registered as members of the National Workers' Provident Fund for Invalidity and Old Age or the Mercantile Marine Invalidity Fund. If an Italian is registered as a member of one of these funds, the German invalidity, old-age and widows' and orphans' insurance institution is bound, on request from him, to transfer to the National Workers' Provident Fund, as contributions to the fund of which the Italian is a member, half the contributions paid by him from the date of his request. In this case the Italian worker and his surviving relatives have no claim to benefit from the German institution.

On the other hand, German subjects residing in Italy may register as members of the Italian National Workers' Provident Fund under the same conditions and with the same effects as Italians; but Germans who insure with this fund have the right to the repayment of their contributions in certain circumstances. Contributions, including those paid by third parties on behalf of the worker, are refunded to the surviving relatives if the insured person dies, or to him in person if he leaves Italian territory before the happening of an event insured against.

The German-Italian Convention is of a very peculiar nature, for its object was to maintain the rights of Italians working in Germany, where invalidity and old-age insurance was compulsory, while in Italy it was voluntary. As a result of the war the Convention was not, and probably never will be, enforced, for Italy has now established a compulsory scheme of her own.

CHAPTER II

MAINTENANCE OF RIGHTS IN COURSE OF ACQUISITION BY TRANSFER OF CAPITAL

The essential object of this method is the settlement of the migrant worker's claim by the payment of a capital sum by the institution which he is leaving to the institution which he is about to join. This transfer has a double object: to allow the old institution to discharge the liability towards the migrant which corresponds with the contributions he has paid to it; and to put the new institution in a position to receive the migrant and enter him as a potential beneficiary.

The problems which must be solved before such a method can be applied are discussed below in the following order:

(1) Determination of the capital representing the rights in course of acquisition;

(2) Date at which this capital is to be transferred;

(3) Determination of the insured person's rights as against the new insurance institution;

(4) Financial settlement between the two insurance institutions.

§ 1. — Determination of Capital representing Rights in Course of Acquisition

The capital representing the rights in course of acquisition is the translation into figures of the migrant worker's claim against the institution which he is leaving. It should be the measure of the difference, at the date of transfer, between the institution's liability towards the migrant and its expectations from him.

In order to solve this problem, a satisfactory reply must be given to two fundamental questions, one technical and the other financial;

is it always mathematically possible to calculate the capital which represents the rights in course of acquisition ? And if so, is it always financially possible for the insurance institution to transfer this capital ?

These questions will be discussed in their relation to the chief typical financial systems—individual accumulation, collective accumulation based on the general average contribution, assessment to meet current expenses, and assessment to meet capital value of pensions.

Under Individual Accumulation Systems

The theoretical basis of an individual accumulation system is that at any moment it is possible to establish, for a given insured person;

(1) the present value of the institution's liability towards that person, that is to say, the present value of the benefits which the institution may have to pay him or his surviving relatives; and

(2) the present value of the institution's expectations from that person (or his obligations towards the institution), that is to say, the present value of the contributions which the institution is entitled to expect from him during a normal occupational career.

Under a pure individual accumulation system the value of (1) is at least equal to—and almost always greater than—that of (2); and the calculation: present value of liability minus present value of expectations (of the institution in respect of the insured person) may be made at any moment for any insured person. The result is known as the actuarial reserve. Thus, in a pure individual accumulation system, the procedure is as if there were a separate insurance contract between the institution and each insured person.

The capital representing the rights in course of acquisition of each insured person is determined automatically in such a system by the difference between the value of the actuarial reserve when he enters and when he leaves the institution (the actuarial reserve when he enters is not necessarily nil if he is then above the minimum age for entry). The capital thus determined is credited to the insured person when he leaves the institution, and his position is then from an actuarial point of view exactly the same as it would be if he were remaining a member.

The individual actuarial reserve is not merely a theoretical number, but a financial reality; the total of all the individual reserves figures on the liability side of the balance sheet of the institution as " total actuarial reserve ".

Consequently the institution has not only a basis for calculation, but also the financial means of discharging any contractual obligation at any moment without endangering its financial equilibrium.

Nevertheless, if the proportion of emigrants were large enough considerably to change the composition of the insured population the institution might feel the effect indirectly—at second-hand so to speak. The calculations for this system are based on a certain average distribution of insured persons according to age, earnings, etc.; and if in these respects the emigrants differed markedly on an average from insured persons as a whole, the biometric tables on which the system was based would cease to apply, and the margin between results and estimates would tend to increase beyond admissible limits.

In determining capital representing rights in course of acquisition the financial aid obtained by the insurance institutions of most countries from the public authorities has of course to be taken into account. This aid takes extremely varied forms; in some cases the authorities pay contributions similar to those of insured persons and their employers, in others they grant supplements to pensions or undertake the payment of certain benefits, in others again they guarantee minimum pensions to certain groups of insured persons, etc. As a general rule, the State budgets each year for its obligations towards insurance institutions, and if it were called upon to pay out the capital representing such obligations in respect of migrating workers in a period in which the number of such migrants was disproportionately large, the corresponding budget items might become both heavy and irregular.

It is, then, possible to adopt the capital representing rights in course of acquisition under an individual accumulation system as the capital to be transferred, on two conditions: if there is no mass emigration at certain periods, and if emigration does not prejudice the insurance of those remaining at home.

Under Collective Accumulation Systems

Collective accumulation systems are based on a general average contribution, uniform for each class of insured persons and calculated from biometric and demographic data with the object of

equating the present values of the institution's total liabilities and expectations. The equivalence is thus established between the institution's liabilities and expectations, not in respect of each insured person, as under the individual accumulation system, but in respect of all persons insured with it, including not only the original generation but also future generations. In order to include the latter, estimates are made of the future development of the insured population with regard to both number and composition. These estimates may be relied upon if the body of persons to whom they apply is large—for instance, all the members of a given compulsory insurance scheme—and are still legitimate when applied to a single institution if insurance with it is compulsorily imposed upon certain groups of persons; but without such compulsion it cannot be guaranteed that the number and composition of the future generations insured with this institution will even approximately coincide with the estimates. In such a case it is impossible to take future generations into consideration and therefore equally impossible to calculate the general average contribution.

On the lines of the above paragraph it is possible to imagine the calculation of the value of the capital representing the rights in course of acquisition, to depend on the age of the insured person on entering and his present age—that is, on his present age and the duration of his membership. Here again one would start from the notion of an actuarial reserve resulting from the difference between the present values of the institution's liability and expectations in respect of the insured person. In the following pages the words " liability " and " expectations " will, for the sake of clarity, always be used from the point of view of the institution.

An actuarial reserve may be calculated in two ways. For each insured person account may be taken of either the past, that is, of the period between the minimum age for entry into insurance and the date of the calculation; or the future, that is, the period after the date of the calculation. If calculation is based on the former only, expectations exceed the liability, and the difference is known as a retrospective reserve, which may be regarded as the theoretical profit made by the institution out of its dealings with the insured person under consideration up to the date of calculation. In the second case on the other hand, the liability exceeds expectations, and the difference is a prospective reserve.

As these systems are not based on the principle of individual equivalence, the total of all liabilities for the two periods is not equal to the total of all expectations for the two periods. The

result is that the excess of expectations over the liability for the first period is not balanced by the excess of the liability over expectations for the second, i.e. the retrospective reserve is not equal to the prospective reserve. In contrast to the position under an individual accumulation system, the two methods lead to different results, for each result corresponds with the difference between the liability and expectations for one of the two periods only—the past or the future—and therefore cannot be considered as entirely appropriate.

This difficulty is still greater when the rights derived from State subsidies have to be taken into account. The effect of such subsidies will depend on the method by which they are granted. When they take the form of additional contributions, they will increase expectations; when they take the form of supplements to benefits, they will diminish liabilities. In any case, they will tend to increase the retrospective reserve and decrease the prospective reserve, thus widening the breach between the two.

From the method by which the general average contribution is calculated, it is possible for an individual actuarial reserve to prove negative. How this may come about may very well be explained without entering into any technical details. A young worker who is newly insured is a " good risk ", and will compensate for the " bad risks " represented by old workers. He will be required to pay a contribution higher than the premium which would suffice, from an actuarial point of view, to cover the risk against which he is insured, while the contrary is true of an old worker. The departure of a young insured person is therefore disadvantageous to the institution, and it is obvious enough that an institution which is already suffering a loss through such a departure cannot be expected to pay out transfer capital at the same time. This is the implication of the existence of a negative actuarial reserve.

Even if the objections which have just been made were ignored, if one of the two actuarial reserves were chosen, and if the capital to be transferred were taken as equal to the difference between the value of this reserve when the insured person entered and when he left the institution, financial difficulties would in certain circumstances arise. For if the group of emigrants were large and consisted mainly of young people, the basis on which the average premium had been calculated would be appreciably modified, and the large-scale transfer of capital representing the rights in course of acquisition of young emigrants mights prejudice the accumul-

ation of the capital representing the rights in course of acquisition of those persons who remained insured with the institution.

The uncertainty of forecasts concerning migration movements renders it impossible to assign beforehand a limit to the size of such movements and therefore to affirm that, if accompanied by a transfer of capital, they would not endanger the financial stability of the institution.

Under Assessment Systems

The essential feature of systems of assessment to meet current expenses is the maintenance of an equilibrium between receipts and expenses for each financial year. Naturally such a system contains no machinery for the automatic accumulation of reserves, and it therefore works without actuarial reserves.

In the case, too, of systems of assessment to meet the capital value of pensions, receipts equal expenses for the financial year, but here the " expenses " must be, not the actual amounts paid, but the present value (or constituent capital) of the pensions which the institution began to pay during the year under consideration. The reserves formed as the system functions are cover for the pensions in course of payment (the acquired rights of insured persons).

Contingency reserves, whose purpose is to provide against chance variations from the normal occurring during the application of the insurance scheme, are distinct from actuarial reserves, first of all because they are not determined, like the latter, on theoretical bases, and secondly, because in practice they are much lower than actuarial reserves.

Determination of capital for transfer on the basis of actuarial reserves is inconceivable under an assessment system because in neither of the two types of this system are there actuarial reserves corresponding with rights in course of acquisition. Reliance on contingency reserves would therefore be the only possibility, and to this there would be two objections. From the technical point of view the calculation of an individual reserve would have to be based on the biometric data which were taken into account when the scheme was set up but not considered during application; while from the financial point of view contingency reserves are not on the same scale as actuarial reserves and would be reduced so greatly that they would become incapable of meeting the demands on them as soon as considerable emigration occurred. Moreover,

under schemes operating on an assessment system State subsidies are usually voted annually to guarantee the institution's financial equilbrium. The expenses entailed by payment of capital for transfer are not included in these advance estimates, and indeed they can hardly be so included in view of the prevailing uncertainty with regard to migration, which sets statisticians an insoluble problem.

It is thus clear that, whatever the point of view taken, the determination of the value of transfer capital under an assessment system is extremely difficult. As for the transfers themselves, these would as a rule meet with insuperable financial obstacles and could, at best, only be effected on a very limited scale.

§ 2. — Date of Transfer of Capital

If it is supposed that, despite the difficulties described in the preceding section, the amount of the capital for transfer has been determined, the date at which the operation should take place has still to be decided on. There are two possibilities, which will be taken in turn.

Transfer at Departure of Insured Person

If this method is adopted the capital is credited by the old institution to the new at the date on which the insured person passed from the former to the latter.

An obvious and considerable advantage is attached to this procedure. The old institution is able to wind up the emigrant's account and strike it off its books. There is, on the other hand, the following serious objection, namely that some insured persons may change their country of residence a number of times. This would mean a series of transfers and consequently a quite superfluous movement of capital; particularly in the by no means rare instance of retro-migration to the native country, there would be a needless exchange of capital between the two countries concerned.

Transfer on Happening of Event Insured Against

The alternative method is for the capital representing the rights in course of acquisition to be calculated at the date of migration but transferred only when the first of the events insured

against happens. Each of the institutions with which the migrant has been insured would continue to administer the capital in its charge as if it were a savings bank account, applying the rate of interest fixed for its own reserves.

The advantage of this method is that it would obviate a series of transfers of capital in respect of persons who worked and were compulsorily insured in three or more countries.

On the other hand, each of the institutions of which the migrant has been but no longer is a member would have to keep open an account for him, despite termination of relations between them, so that the principal advantage of the immediate transfer—the liquidation of the migrant's rights and the closing of transactions between him and the institution in the country of emigration—cannot apply here.

Another difficulty occurs if no claim matures, that is, if the insured person dies without leaving pensionable relations and without having been entitled to invalidity benefit since he left the institution holding the transfer capital. In calculating this capital, consideration must be given to the chance that a claim will mature; this means that account must be taken not only of the cases which are " bad " from the point of view of the country of emigration, i.e. the cases in which the claim matures, but also of the " good " cases from the same point of view, i.e. the cases in which no benefit has to be paid. It would thus be quite inconsistent with the principles on which the capital for transfer was computed if this capital were subsequently transferred only on behalf of certain migrants—those in respect of whom a claim matured; and, therefore, if the computation is to receive its logical application, only one solution is conceivable—namely the transfer of the capital in every case. But this procedure entails still another difficulty: if an insured person migrated a number of times and no claim ever matured, which institution would receive the transferable capital ? And if several were to share it, how should it be divided up ? It seems impossible to find a satisfactory answer to these questions, and the complex nature of the problem thus raised shows that if the system of transfer when the claim matures were adopted, the procedure of transfer would not always be clearly indicated, since in certain cases there would be room for doubt concerning the recipient and the division of the transferable capital.

If it is added that the value of the capital would have to undergo all the fluctuations affecting economic and monetary conditions

in the country of emigration during ten, twenty or even thirty years, the only possible conclusion is that the best date for the transfer of the capital representing rights in course of acquisition is the date of departure.

§ 3. — Determination of Rights as against New Insurance Institution

The insurance institution which receives the migrant, and with him the appropriate capital, must at once give the former the status of insured person. The importance of the question of the contribution and benefit class in which he is to be entered is obvious when the practical details connected with the transfer are examined.

An insured person emigrates from a country and is allowed by it a sum representing his rights in course of acquisition (transfer capital). This sum will not be exactly equal, except in very rare cases, to the reserve which corresponds with his age (and wage class if such a classification is made) in the country of immigration, for these reserves are calculated on different bases in different countries. As a rule, then, there will be a margin on one side or on the other.

The capital may be more than is required; in this case the balance can be paid to the insured person or used to entitle him to supplementary benefit.

If, on the other hand, the capital is too small to entitle the migrant to normal benefit in the country of immigration, his position will be below the minimum level guaranteed by the scheme in force there.

The problem to be solved can thus be briefly stated as that of regularising the position of a person who immigrates with a capital equal to, smaller than or greater than the reserve corresponding with his age and wage class.

This is the counterpart of the problem previously considered; the methods of solving the two are similar, as are the difficulties entailed. Reference may therefore be made to the above paragraphs concerning the determination of transfer capital under the different financial systems. Here again the objections which arise lead to the conclusion that the transfer of capital is not practicable unless the financial systems of both the insurance-schemes involved —in the countries of emigration and immigration—are based on individual accumulation.

Nevertheless, a serious difficulty can be overcome if the country

of immigration undertakes to supplement the transfer capital to the extent necessary to permit insurance of the migrant under its own scheme. Such an arrangement—which may be reciprocal—has been concluded between Great Britain and the Irish Free State; it is conceivable only if each country grants similar facilities to its own subjects. As a rule this is not the case; if in the country of immigration the State does not subsidise its own subjects, it cannot treat immigrants more favourably. This solution will therefore rarely be adopted, and, above all, it cannot be accepted by countries to which there is much migration. Without such a subsidy, a minimum benefit cannot in every case be guaranteed to immigrants.

§ 4. — Financial Adjustment between Insurance Institutions

The accountancy details of the financial adjustment will be passed over here, the following remarks being confined to the two essential problems raised—the choice of the most suitable body to undertake the transfer of capital, and the determination of the applicable rate of exchange.

Transfers have hitherto been conceived as taking place between an insurance institution in the country of emigration and an insurance institution in the country of immigration. The situation is in no way changed if in the two countries the various branches of insurance are centralised, and, from a financial point of view, form part of a single body; but as a rule there are a number of distinct institutions (in France, Germany and Great Britain, for instance). In such a case the best course seems to be to utilise some central institution which would undertake the transfer of capital and, acting as a clearing house for debits and credits, would be able to balance the one account against the other. In this way it would be possible not only to secure more effective supervision but also to reduce the volume of capital transferred from country to country, since the sums which passed periodically from one central institution to another would represent, not the total credit and debit accounts of each international institution, but the balance obtained by a subtraction of the one from the other.

If there already exist one or more equalisation funds within a country, the obvious course is to select this, or one of these, as best fitted to transfer the capital paid out on behalf of migrants and to make all possible preliminary book transfers. If no such

body is in existence, or if, though existing, it cannot extend its activity, the country concerned will have to consider the establishment of an office competent to supervise international transfer operations and pay out or receive the appropriate balances; such an office would have need of a working capital fund. In order to extend the scope of preliminary book transfers, and thus reduce actual transfers of capital, the office should act for all the insurance institutions of the country concerned.

The last step would then be the actual carrying out of the transfers of capital between the chosen institutions of the different countries. These operations would give rise to familiar difficulties, difficulties which might be almost insuperable at times of financial depression and monetary instability. Above all, the applicable exchange rate could not be left indeterminate, but would have to be fixed beforehand either by bilateral agreements or by a future international scheme. It would be possible to adopt either the rate at the date of transfer, or the Universal Postal Union's rate or the average rate over a fixed period preceding the date of transfer.

None of these three possible courses seems calculated to solve the problem and to avoid uncertainty. Disadvantages would in every case remain, and in periods of monetary depression they might prove insurmountable. The sum received by the new institution, and therefore in most cases the future position of the migrant, would depend on an exchange operation undertaken at a given moment, and therefore at a single rate. It is clear that such a system would be extremely sensitive to fluctuations, and might be affected seriously by mere chance variations with no real change in economic conditions behind them. The result would be quite unjustified differences, for or against the insured person, in the settlement of cases which should, from a rational point of view, have met with similar treatment.

The intervals between transfers (monthly, quarterly or half-yearly) could be determined by special agreement in each case, on condition that a complete settlement were made for each financial year.

§ 5. — Actual Application of Method

The method of capital transfer has so far been applied on a very limited scale only. It is adopted in only one international treaty, that between Great Britain and the Irish Free State, and even that is a quite exceptional case, for the two insurance schemes

involved have a common origin, and closely resemble one another.

The treaty is analysed below as an example, emphasis being laid less on its peculiar features than on its importance for the solution of the general problem of the maintenance of migrants' rights.

Reciprocal Arrangements between Great Britain and the Irish Free State

The Act of 1922, which established the Irish Free State and fixed its Constitution, necessitated separate health insurance schemes for the two countries. The first legislation which aimed at putting this secession into effect (1923) laid down the principle of *continuity of insurance in case of emigration*, the enforcement of this principle being left to the National Health Insurance Joint Committee on the one hand and the Irish Insurance Commissioners on the other. These two authorities, acting in agreement, drew up the Arrangements of 1924. This document (National Health Insurance, Irish Free State Reciprocal Arrangements Order 1924) only gives a few general indications in so far as financial adjustments are concerned: it is the practical application of the arrangements by the actuaries which is interesting.

Determination of Transfer Capital

The health (sickness and invalidity) insurance schemes of Great Britain and the Irish Free State use the same financial system, based theoretically on individual accumulation. Under such a system it is possible at any date to calculate the present value of the insurance institution's liability towards, and expectations from, each insured person. The difference between these two figures is the fundamental theoretical factor under the two schemes; in Great Britain and Ireland it is known as the transfer value, which is identical with the individual actuarial reserve defined above. Another important factor closely connected with it is the reserve value, which is the transfer value (actuarial reserve) at the date of entry into insurance. The essential assumption on which the theory of the financial system rests is that the reserve value in respect of persons who enter insurance at the age of sixteen is nil; the reserve value of a person entering insurance at a later age—thirty for instance—is equal to the transfer value which would have accumulated on his behalf if he had been insured since the age of sixteen.

Since the essential features of individual accumulation appear in both insurance schemes, it is possible to define the capital for transfer from one country to the other as the difference at the date of migration between the transfer value and reserve value in respect of the migrant worker.

In practice the value of the reserves is taken from tables drawn up in advance. In 1924 the same tables were in force in the two countries; the problem was thus simplified because, other things being equal, this capital was necessarily the same in whichever direction migration occurred.

Date of Transfer

The insurance society of the country which an insured person enters (leaves) is credited (debited) at the date of migration with the appropriate sum; the migrant is obliged to join a society within eighteen months of this date. The total financial adjustments entailed must, say the Reciprocal Arrangements, be agreed upon from time to time by the central insurance authorities of the two countries.

Determination of Rights under new Scheme

The immigrant is in every way assimilated to other persons insured under the scheme in the country of immigration, and is immediately entitled to all the rights enjoyed by insured persons of his age and category.

In every case the society which he joins receives the reserve value which is required for entry into insurance; the difference —which may be positive or negative—between it and the capital transferred is carried or charged to the competent authority in the country of immigration.

Operation of Transfers

To complete the above analysis two typical instances showing the working of the various provisions of the Arrangements are given below.

(*a*) A worker sixteen years of age enters an insurance society in one of the two countries, and subsequently migrates. His whole transfer value at the date of migration goes from his old society to the society which he joins.

(*b*) A worker enters an insurance society after the age of sixteen and subsequently migrates (suppose for the sake of clarity

that he migrates from England to the Irish Free State—there is in any case complete reciprocity).

When he joined the English society, the latter received a sum equal to his reserve value from the English insurance fund (Reserve Suspense Fund). When he migrates:

(i) the English society is debited with his full transfer value;

(ii) a sum equal to his reserve value returns to the English Reserve Suspense Fund;

(iii) the difference between the transfer value and reserve value is transferred from the English society to the Irish Society;

(iv) the country of immigration (the Irish Free State) raises the sum transferred, if necessary, up to the level of the reserve value required, in consideration of the age and category of the immigrant, for membership of an insurance society in that country.

The definition of the sum transferred as the difference between transfer value and reserve value derives from a principle to which reference has already been made: it is that the rights taken into consideration for the computation of transfer capital correspond only with the contributions paid by or for the insured person and not with the original reserve value paid by the State for each person who begins to insure after the age of sixteen.

The hardship to which the application of such a principle might lead is counterbalanced in the Arrangements between Great Britain and the Irish Free State by the undertaking of the country of immigration to raise the sum transferred, if necessary, up to the level of the reserve required for immediate acceptance of the immigrant as an insured person. This provision places the immigrant in the same position as other insured persons in the country of immigration, and is thus a simple and satisfactory solution of the problem of benefit rights under the new scheme. If all migration between the two countries is taken as a whole, a number of payments may be cancelled, but in general the difference between the reserve value credited and the capital transferred must be borne by the country of immigration. Such a solution is only possible if the country concerned agrees to bear this charge, and it is clear that all would not do so. Such an arrangement, despite its attractive simplicity and good results, cannot therefore be taken as a model method for general application.

As regards the tables from which the reserve and transfer values required for the computation of transfer capital are to be taken, that originally chosen—the British table of 1924 for transfers in both directions—is not of great interest from the theoretical point of view; it is indeed applicable only because the transfer rates of the two countries are identical. This is a highly exceptional position, for the identity extends not only to a pair of numbers but to two entire series. When the Arrangements were first put into force, the 1924 tables (see table I below) were in use within each country, and their choice for the computation of transfer capital was an obvious one. A difficulty arose in 1928, when the introduction of an old-age and widows' and orphans' insurance scheme in Great Britain necessitated fresh tables (see also table I below) and these were put into retroactive force as from 1 January 1926. Since this date the rights of the Irish immigrant, who brings an unnecessarily large reserve with him, are not always fully guaranteed in Great Britain, though the view may be taken that he is amply compensated by membership of the old-age and widows' and orphans' scheme.

Another objection to the scheme is that in determining the transfer capital account is not always taken of the financial position of the insurance society in the country of emigration, though the migrant may have contributed to its prosperity. If he moves from a "rich" to a "poor" society the fall in the level of the supplementary benefit to which he is entitled may mean a considerable loss.

Apart from the difficulties which arise in the working even of this method, it must be remembered that the whole question takes a quite exceptional form in the case of Great Britain and the Irish Free State. The financial system of both the schemes concerned is based on individual accumulation, which is, it has been stated, the most favourable system for the transfer of capital; further, the two schemes were only separated in 1922 and are really two branches of the same tree. The similarity resulting from their common origin extends not only to technical organisations but also to development and financial possiblities. The result is a number of simplifications, not the least important being the identity of the two currency systems.

It must be concluded that, despite the obvious advantages of the Arrangements between Great Britain and the Irish Free State, such a method cannot be recommended for use between insurance schemes possessing financial systems which differ in type or even only in their statistical bases.

TABLE I. — TRANSFER VALUES

Age at Transfer	Regulations 1924 [1] (After at least two years' insurance)			Regulations 1928 [2] (After at least one year's insurance)		
	Men	Spinsters and Widows	Married Women	Men	Spinsters and Widows	Married Women
	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.
18	1 6	1 0	15 12	1 4	1 2	20 0
20	2 8	1 12	15 2	1 18	1 12	18 2
25	4 16	2 16	13 6	3 16	2 8	14 2
30	6 18	4 14	13 4	5 4	3 2	12 12
35	8 18	7 14	13 16	6 12	4 8	12 16
40	11 2	11 0	15 0	8 2	6 2	13 10
45	13 8	14 2	16 14	9 16	7 16	14 4
50	15 14	16 14	18 10	11 4	8 18	14 4
55	16 18	17 18	19 4	11 4	9 0	12 18
60	15 12	16 2	16 18	8 18	7 4	9 10
64	11 6	11 8	12 0	5 8	5 0	5 12
69	3 16	3 16	3 18			

[1] N.H.I. (Reserve and Transfer Values) Regulations, 1924. S.R.O. 1924, No. 1468.
[2] N.H.I. (Reserve and Transfer Values) Regulations, 1928. S.R.O. 1928, No. 403.

§ 6. — Possibility of International Application of Method

Under a pure individual accumulation system the two sections of the problem—the determination of the transfer capital and the determination of rights as against the new institution—can be solved if both parties have recourse to the same well-defined factor, the individual actuarial reserve. By this method the technical difficulties are reduced to the minimum, and in the Reciprocal Arrangements between Great Britain and the Irish Free State they are actually overcome.

Under a collective accumulation system based on the average contribution, the individual actuarial reserve may be calculated in two ways, retrospectively and prospectively, and the two results are different; it is therefore hard to arrive from this reserve at a definitive figure for the transfer capital. The other conceivable kinds of reserves—average reserves, social reserves, etc.—cannot be defined with sufficient generality, and without reference to the financial system of the institutions concerned.

Under an assessment system the determination of transfer capital would be quite unconnected with the factors which actually govern the application of the system; and the forecasts on which

it would be based could not cover fluctuations in the volume and nature of migration.

It may be concluded therefore that the idea of the capital representing rights in course of acquisition can only be defined with exactitude under a pure individual accumulation system. Under all other systems it can only be determined by methods which leave much to be desired and which do not lead to a complete solution of the problem.

If the question is viewed from the financial standpoint the same conclusion is arrived at: a pure individual accumulation system is the only one under which a method of capital transfer can easily be applied, and individual accumulation reserves are as a rule sufficiently high to allow the institution to pay each migrant the capital representing his rights in course of acquisition. Under a collective accumulation system, however, the reserves actually formed are not so high, and an institution which paid out capital for transfer would rapidly upset its own financial equilibrium if emigration on a large scale occurred. Under assessment systems, whether designed to meet current expenses or to meet the capital value of pensions, no reserve is formed to provide for rights in course of acquisition, and the contingency reserve, on which the institution would have to rely, might turn out altogether insufficient.

In short, under any other but an individual accumulation system an institution would only be able to find a very limited amount of capital for transfer, and would be unable to meet the strain on it as soon as migration attained any considerable volume.

A factor of importance in the determination of transfer capital is the contribution of the State. The question how the subsidies granted by public bodies are to be included in the resources on the basis of which migrants' rights are calculated is a very delicate one, and the answer to it depends essentially on the part which these subsidies play in the economy of the scheme. If they are clearly intended to guarantee its financial equilibrium, it seems unjustifiable to make any deduction from them, particularly when the development of migration does not improve the quality of the insured group from the institution's point of view (in its effect, for instance, on the average age).

In the foregoing discussion it has been consistently assumed that the financial organisation of an insurance institution may be assimilated to one of the typical systems. In fact, the financial working of the institutions now in existence is much more hetero-

geneous, and to assign a given institution to one of the principal types cannot mean more than that the essential features of this type play a part in the enforcement of the scheme, and may not mean more than that these features were taken into account in the preparatory work of drafting the financial organisation. Even from the purely technical point of view a distinction must be made between the insurance scheme as actually enforced and the theoretical basis on which its financial system rests.

As far as the determination of transfer capital is concerned, the methods which have been studied above will apply only in so far as the schemes do not in practice depart too markedly from their theoretical structure, and discussions of the choice, as transfer capital, of the theoretical values taken to represent rights in course of acquisition will occur for every variety of case which arises.

It has also been assumed above that all the demographic and biometric data needed for the establishment of a technically perfect scheme were obtainable; this exceptionally favourable hypothesis is not always realised. A conceivable method in all cases is to supplement the available data by adopting classical methods, but it is clear that the factors introduced as a consequence would be foreign to the working of the scheme and might not be adaptable to the forecasts already made. Moreover, all the necessary data could not always be found in the statistics of the country concerned; reference would have to be made to experience elsewhere, and the result would necessarily be selection and adjustment very largely arbitrary in nature. Further, the objection noted above would reappear, namely, the impossibility of calculating complete data to include the development of migration itself.

The first step in any consideration of the question must be to separate each branch of insurance from the rest; otherwise, the dovetailing of insurances against the various risks, which are not associated in a similar manner in all countries, would complicate the problem.

The transfer operations should be undertaken by a central institution, already existing or set up *ad hoc* in each country concerned; they would include the balancing of debits and credits and the making of the resultant international payments. It is clear that the capital transfer method, more than any other, would necessitate movements of funds; and particular difficulties (exchange rates, limitation of the export of currency, etc.) would be raised on all sides by the monetary depression and its consequences.

To conclude, though the capital transfer method may be adopted in special cases—when exceptionally favourable circumstances occur—the difficulties which arise when an attempt is made to envisage its general application are so formidable that it can hardly be proposed as a basis for the international solution of the problem of the maintenance of migrants' rights.

CHAPTER III

MAINTENANCE IN EACH COUNTRY OF RIGHTS IN COURSE OF ACQUISITION

The technical and administrative difficulties of transferring the capital representing migrants' pension rights in course of acquisition have led the national administrative authorities and insurance institutions to seek some arrangement for the maintenance of rights, both easier to apply and compatible with the different financial systems on which the invalidity, old-age and survivors' insurance schemes of the various countries are based.

The solution sought aims at securing continuity of the migrant's insurance career without involving any transfer of funds, or even settlement of accounts, between the insurance institutions to which he has successively belonged. The settlement of claims in course of acquisition in the country of emigration is held over until the event insured against occurs, and account is then taken in the country of immigration of the insurance periods spent in the other country. In other words, the migrant's insurance career is no longer interrupted every time he goes from one country to another, and the insurance periods spent in different countries form a continuous whole, so that when the event insured against occurs he can be credited with the whole duration of his insurance by each of the insurance institutions.

This system, which was already outlined in the Labour Treaty concluded on 30 September 1919 between France and Italy and in the Franco-Polish Convention of 1920, was carried a stage further by the General Agreement of July 1925 between Italy and Yugoslavia providing for reciprocity in social insurance, and by the Austro-German Treaty of 1926. It has since been developed and perfected by a number of social insurance treaties now in force or awaiting ratification, to which the following countries have put their signatures: Austria, Belgium, Czechoslovakia, France, Germany, Italy, Netherlands, Poland, Spain, Yugoslavia.

The present chapter gives an analysis of the treaties based on this system, which makes possible the maintenance in each country of migrants' rights in course of acquisition and the distribution of pension liability between the insurance institutions of the various countries in which the migrant has been successively insured.

The material provided by the treaties may be divided into three sections.

The first deals with the *beneficiaries under arrangements for the maintenance of rights*, that is to say the persons who are or will be entitled to the protection of the treaty provisions governing the maintenance of the rights in course of acquisition of workers who change their residence from one country to another and of their dependants.

The keystone of the system is the *totalisation of insurance periods*. In establishing the migrant's right to benefit, each institution takes into account not only the insurance periods which he spent under its law, but also those spent as a member of any other institution covered by the arrangements for the maintenance of rights. The principle of the totalisation of insurance periods will be discussed in the second section.

The third section deals with the *determination of the pension liability of each insurance institution*. If each institution were to take into account all the insurance periods spent by the migrant in assessing the amount of the pension as well as in establishing the right to it, the resultant liability would be too heavy. So far as concerns the pension or pension components calculated on the basis of the number and amount of paid-up contributions, it is only fair that these should be paid by each institution in proportion to the contributions it has received; but, on the other hand, an institution cannot reasonably be expected to grant the whole of the fixed pension or pension components which are independent of the number and amount of the contributions paid, and even of the duration of insurance. A solution is therefore adopted which, though rough, has the merit of simplicity: each institution is required to pay fixed benefits or portions of benefits only in the same proportion as the insured person's contribution periods under its law bear to the total of the periods counted for the purpose of reckoning benefits. The inclusion in the calculation of all periods in insurance is thus balanced by this reduction in the liability for fixed pensions or pension components.

SECTION I

BENEFICIARIES UNDER ARRANGEMENTS FOR MAINTENANCE OF RIGHTS

The arrangements for the maintenance of migrants' pension rights in course of acquisition set up by bilateral treaties cover workers insured successively in each of the contracting countries and the dependants of such workers.

These arrangements affect only those workers and their dependants who are transferred under specified conditions from the insurance scheme of one country to that of the other. They do not apply to the transference of workers from one insurance institution to another in the same country, which is governed entirely by national legislation.

They also exclude workers who, having been insured in one of the contracting countries, subsequently take up residence in the other without again entering insurance. Cases of this kind are not within the scope of a system of maintenance based on the totalisation of the insurance periods spent in each country. But as it is nevertheless desirable that protection against the loss of rights consequent on their change of residence should be afforded to these workers also, both as regards the maintenance of rights in course of acquisition in the former country of residence and the right to continue insurance voluntarily, a few of the more recent treaties extend their protection to such workers through special provisions, which are not, properly speaking, part of the machinery for the maintenance of rights and will therefore be reserved for later discussion.

The object of the present chapter is to describe the conditions qualifying workers and their dependants for the protection of the arrangements for the maintenance of rights set up by the treaties.

The first of these conditions is a general one, prescribed by all treaties, namely, that the migrant shall be or shall have been insured under at least one of the insurance schemes covered by the treaty. These schemes are enumerated in each treaty, and only workers who are or have been insured with an insurance institution connected with one of them are entitled to the benefit of the arrangements agreed upon between the contracting countries. The first subsection therefore describes the *insurance schemes covered by the arrangements for the maintenance of rights.*

But the fact of belonging, or of having belonged, to an insurance scheme covered by the arrangements for the maintenance of rights is not always sufficient in itself to qualify the worker for the enjoyment of their benefits. Protection in respect of the maintenance of rights in course of acquisition is in fact sometimes reserved for workers who are nationals of one or other of the contracting countries. This restriction appears at first sight to be a normal one, based on the functions of the State as guardian of the rights and interests of its nationals. Nevertheless, it is characteristic of the evolution of opinion on the principle of the maintenance of migrants' rights that recent treaties omit the condition of nationality. The scope of the arrangements as regards *nationality* are dealt with in the second subsection.

§ 1. — Insurance Schemes Covered by Arrangements for Maintenance of Rights

The arrangements for the maintenance of rights cover workers who are or have been insured, in each of the contracting countries, with at least one of the insurance institutions of the schemes to which the treaty applies. The fixing of the conditions under which insurance status is acquired is left to the national regulations by which each institution is governed; the national law of the contracting country concerned must be consulted in order to establish whether the migrant has or had the status of insured person in that country. Before describing the scope of the arrangements for the maintenance of migrants' rights in course of acquisition, it is necessary to ascertain the insurance schemes which it covers in each country.

There are only a few countries which have set up a single compulsory invalidity, old-age and widows' and orphans' insurance scheme covering workers in all occupations and of all social groups. The organisation of a system for the maintenance of migrants' pension rights in course of acquisition would be relatively easy between countries which have adopted this course, since all that would be necessary would be to regulate the transference of members from one general scheme to the other.

In the great majority of the countries between which migration movements take place, however, a number of special schemes have been set up, side by side with the general scheme, for workers in certain occupations such as miners and seamen, or again for certain social groups such as salaried employees or non-manual workers.

In some countries indeed compulsory insurance has so far been introduced only for workers in certain occupations or belonging to certain social groups.

The organisation of a system for the maintenance of migrants' rights in course of acquisition between countries in which a general invalidity, old-age and survivors' insurance scheme is replaced or supplemented by two or more special schemes gives rise to the problem of determining the scheme or schemes to be covered by the system. The limits of choice vary according to the degree of similarity between the insurance schemes of the two countries.

The schemes capable of incorporation into a system for the maintenance of rights in course of acquisition may differ as regards their scope, whether insurance is compulsory or voluntary, and also as regards the risks covered and the degree of protection granted.

In the matter of scope there is a substantial difference between the general schemes, which cover all or nearly all workers in all occupations, and the special schemes, which are restricted to workers in certain occupations or belonging to certain social groups. A comparison between general schemes reveals that even they differ considerably from one country to another, according, for instance, as they prescribe a limit of earnings for insurance liability, or apply such a limit in respect of all workers or of certain groups only. In the same way, the occupational schemes of the two countries, e.g. the special pension schemes for miners, may also differ in scope, one applying exclusively to the coal-mining industry and the other to workers in all kinds of mines.

As regards the risks covered, the schemes incorporated in the system may again differ widely. In some cases they may cover the threefold risk of premature invalidity, old age and death, while in others benefits may be provided only in case of old age or premature invalidity.

The degree of protection granted depends partly on the conditions of benefit and partly on the composition and amount of the benefits awarded when the event insured against happens. In this respect again, the schemes of the different countries, both general and special, are far from identical, although this may not be an insuperable obstacle to the maintenance of migrants' rights in course of acquisition.

Finally, the schemes covered by the arrangements may apply over the whole national territory in one country, and in another only over a given district or locality, for instance, a historical division of the country.

The fact that in spite of all these differences, of which the disparity between the various risks covered is the most important, it has been possible to organise the maintenance of migrants' pension rights in course of acquisition between schemes only roughly corresponding to each other is due to the extreme flexibility of the system adopted, namely, the totalisation of the contribution periods spent in the contracting countries and the distribution of pension liability between their insurance institutions. This system ensures that although all insurance periods are taken into account, each country assesses the migrant's rights according to its own regulations, and is responsible only for the benefits corresponding to the contributions it has itself received.

The following table shows the insurance schemes covered by the arrangements for the maintenance of migrants' pension rights in course of acquisition set up by bilateral treaties.

INSURANCE SCHEMES COVERED BY BILATERAL TREATIES [1]

GERMANY	AUSTRIA (1930)
Invalidity, old-age and widows' and orphans' insurance for salaried employees.	Invalidity, old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurance for miners (workers and salaried employees).	Invalidity, old-age and widows' and orphans' insurance for miners.
GERMANY	**FRANCE [2] (1932)**
Invalidity, old-age and widows' and orphans' insurance for workers.	Invalidity, old-age and widows' and orphans' insurance for employed persons.
Invalidity, old-age and widows' and orphans' insurance for salaried employees.	Invalidity, old-age and widows' and orphans' insurance for miners.
Invalidity, old-age and widows' and orphans' insurance for miners (workers and salaried employees).	Special schemes retained in force in the Departments of the Upper and Lower Rhine and the Moselle; schemes for workers, salaried employees, and special miners' scheme.
GERMANY	**POLAND (1931)**
Invalidity, old-age and widows' and orphans' insurance for workers.	Invalidity, old-age and widows' and orphans' insurance for workers.
Invalidity, old-age and widows' and orphans' insurance for salaried employees.	Invalidity, old-age and widows' and orphans' insurance for intellectual workers.

[1] The titles used for these insurance schemes are those adopted in *Compulsory Pension Insurance*, International Labour Office, Studies and Reports, Series M (Social Insurance), No. 10.

[2] In the Saar Territory the treaty covers the insurance schemes for workers, salaried employees, and the special miner's scheme.

Invalidity, old-age and widows' and orphans' insurance for miners (workers and salaried employees).

GERMANY

Invalidity, old-age and widows' and orphans' insurance for workers.
Invalidity, old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurance for miners (workers and salaried employees).

GERMANY

Invalidity, old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurance for miners (workers and salaried employees).

AUSTRIA

Invalidity, old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurance for miners.

AUSTRIA

Invalidity, old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurance for miners.

AUSTRIA

Invalidity, old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurance for miners.

BELGIUM

Old-age and widows' and orphans' insurance for workers.
Old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurance for miners.

SPAIN

Old-age insurance for employed persons.

Invalidity and old-age insurance for miners in Upper Silesia and the Southern Provinces.

CZECHOSLOVAKIA (1931)

Invalidity, old-age and widows' and orphans' insurance for workers.
Invalidity, old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurancef or miners.

YUGOSLAVIA (1928)

Invalidity, old-age and widows' and orphans' insurance for salaried employees in Slovenia and Dalmatia.
Invalidity, old-age and widows' and orphans' insurance for miners.

FRANCE (1930)

Invalidity, old-age and widows' and orphans' insurance for employed persons.
Invalidity, old-age and widows' and orphans' insurance for miners.

CZECHOSLOVAKIA (1931)

Invalidity, old-age and widows' and orphans' insurance for salaried employees.
Invalidity, old-age and widows' and orphans' insurance for miners.

YUGOSLAVIA (1931)

Invalidity, old-age and widows' and orphans' insurance for salaried employees in Slovenia and Dalmatia.
Invalidity, old-age and widows' and orphans' insurance for miners.

NETHERLANDS (1931)

Invalidity, old-age and widows' and orphans' insurance for employed persons.
Invalidity, old-age and widows' and orphans' insurance for miners.

FRANCE (1932)

Invalidity, old-age and widows' and orphans' insurance for employed persons.
Invalidity, old-age and widows' and orphans' insurance for miners.

Special schemes for invalidity, old-age and widows' and orphans' insurance retained in force in the Departments of the Upper and Lower Rhine and the Moselle.

FRANCE

Invalidity, old-age and widows' and orphans' insurance for employed persons.

Invalidity, old-age and widows' and orphans' insurance for miners.

Special schemes for invalidity, old-age and widows' and orphans' insurance retained in force in the Departments of the Upper and Lower Rhine and the Moselle.

ITALY (1932)

Invalidity and old-age insurance for employed persons.

Invalidity and old-age insurance for the staffs of private undertakings carrying on public transport and telephone services.

FRANCE

Invalidity, old-age and widows' and orphans' insurance for workers.

Special schemes for invalidity, old-age and widows' and orphans' insurance retained in force in the Departments of the Upper and Lower Rhine and the Moselle.

POLAND (1920)

Invalidity, old-age and widows' and orphans' insurance for workers.

Invalidity, old-age and widows' and orphans' insurance for intellectual workers.

ITALY

Invalidity and old-age insurance for employed persons.

YUGOSLAVIA

Invalidity, old-age and widows' and orphans' insurance for salaried employees in Slovenia and Dalmatia.

Invalidity, old-age and widows' and orphans' insurance for miners.

The special schemes for miners' pensions are covered by special treaties concerning miners' insurance between Belgium and France (1927), Belgium and Poland (1931) and France and Poland (1929). The general French and Polish schemes for invalidity, old-age and widows' and orphans' insurance are also covered by these treaties, in so far as the workers concerned are not exempted from the general schemes in virtue of the special miners' pension schemes.

CONSEQUENTIAL AMENDMENTS OF NATIONAL INSURANCE SCHEMES

The introduction of arrangements for the maintenance of migrants' rights in course of acquisition entails certain changes in the national schemes affected. As a result of a treaty providing for the maintenance of these rights, insurance liability may have to be extended in one of the contracting countries to groups of workers who were previously excluded or, on the contrary, withdrawn from others

which it previously covered. What are the effects of the changes made in the national legislation governing insurance on the scope of the bilateral arrangements ?

Most of the treaties providing for the maintenance of migrants' rights in course of acquisition stipulate that their arrangements shall not be affected by any amendments to the national schemes covered by the treaty. Some indeed even provide beforehand for the extension of the provisions for maintenance, either automatically or through a special new agreement between the parties, in respect of schemes which have not yet been put into operation in one or other of the contracting countries. Others, on the other hand, stipulate that any widening of the scope of the treaty provisions resulting either from an extension of the national insurance schemes to include new groups of workers or from changes in the conditions governing the grant of benefit, shall be subject to a new agreement.

Provision for the extension of the bilateral arrangements to schemes intended to become operative in one of the contracting countries after the treaty comes into force is made by the treaties between Germany and Austria and Spain and France. These stipulate that workers insured with insurance institutions set up under future schemes shall be entitled to the maintenance of their rights in course of acquisition in conformity with the system set up by the treaties.

In the treaty between Germany and Austria (Article 17, No. 1, and Article 32, No. 2), it is agreed that the bilateral arrangements introduced shall apply to the workers' schemes of the two countries; but as the Austrian schemes for workers in industry and commerce and for agricultural workers have not yet become operative, the relevant provisions of the treaty will not come into force until the Austrian Acts concerning insurance for workers in industry and commerce, and for agricultural workers, have become fully operative. They will then apply automatically, and without further agreement.

The treaty between Spain and France (Article 2, No. 2) is to apply not only to all laws or regulations issued to amend or complete the insurance schemes mentioned in the treaty, but also to all those instituting similar new schemes in future.

The treaty between Germany and Yugoslavia neither covers invalidity, old-age and survivors' insurance for workers, which is not yet in force in Yugoslavia, nor provides for the automatic extension of the arrangements in the event of the introduction of such a scheme. It is, however, agreed in the final protocol

of this treaty that, should occasion arise, the two Governments will enter into negotiations with a view to extending the arrangements for the maintenance of migrants' rights in course of acquisition to the invalidity, old-age and survivors' insurance of workers. Similar clauses, also relating to workers' pension insurance schemes in the countries concerned, are contained in the final protocol of the treaty between Austria and Czechoslovakia, and in Article 31 of that between Austria and Yugoslavia.

Mention must also be made here of the treaty between Italy and Yugoslavia, which makes arrangements for the maintenance of rights in course of acquisition between all the compulsory pension insurance schemes in force in the two countries, and will apply automatically to the general scheme in Yugoslavia as soon as the latter comes into force (Article 19, No. 1).

Other treaties, such as those already in force or awaiting ratification between Germany and France, Austria and France, Belgium and France (miners), Belgium and the Netherlands, Belgium and Poland (miners), France and Italy, France and Poland (miners), provide that any amendments or additions to the insurance schemes covered by the treaties shall also be extended to the beneficiaries of the system of maintenance. The extension is automatic under the treaties between Germany and France, Austria and France, and France and Italy. Under the treaties on miners' pensions between Belgium and France (Article 14, No. 2), Belgium and Poland (Article 28, No. 2) and France and Poland (Article 36, No. 2), any extension of the scope of miners' insurance to include new groups of workers and any amendments to the conditions of benefit in force when the treaty became operative must be dealt with by special agreements between the contracting countries, whereas amendments relating to the rates of benefit apply automatically. The treaty between Belgium and the Netherlands (Article 7) adopts a new solution, providing that amendments to the legislation of either country shall apply automatically, but that as regards the automatic application of legislation extending insurance liability to new groups of workers or introducing changes in the conditions of benefit, either party may raise an objection within six months of the promulgation of the relevant Act.

Territorial Scope of Insurance Schemes

The insurance schemes covered by the arrangements for the maintenance of migrants' rights in course of acquisition retain,

for the purpose of the arrangements, the territorial scope prescribed by the legislation by which they are governed.

If, as an exception to the principle of territoriality, a given scheme applies to workers employed abroad, these workers also benefit by the arrangements for the maintenance of rights. Exceptions of this kind are made in the interests of continuity of insurance, in particular for workers transferred by an undertaking with its headquarters in one country to temporary employment for not more than a specified period in the other.

On the other hand, many countries have insurance schemes restricted to a certain area of their national territory, like the local schemes retained in force after the territorial readjustments of the Peace Treaties of 1919. These local schemes are incorporated into the treaty system, with their original territorial scope.

Having once been accepted as right and fair both to the migrant workers themselves and to the insurance institutions, the principle of the maintenance of migrants' rights in course of acquisition is now tending to extend to relations with countries which are not parties to a given bilateral treaty. It is in fact to the interest of the contracting countries that insurance periods spent under the schemes of a third State should also be taken into account in applying the system which they have adopted for the maintenance of rights. The development of this idea may be traced in the texts of the more recent treaties. The tendency to extend the system beyond the frontiers of the contracting countries seems to point to a general system of international regulations as the only method of reaching a wholly satisfactory solution.

The treaty between Germany and Yugoslavia, signed in December 1928, lays down no provisions for the extension of the machinery for the maintenance of rights in the main body of the agreement, but the final protocol provides that if one of the contracting countries subsequently concludes a treaty of reciprocity in social insurance with a third State, the two Governments shall examine if and how the principles of reciprocity may be extended to the insurance of the third State. A similar clause is contained in the treaty of February 1930 between Germany and Austria.

The treaty between Austria and Yugoslavia, signed in July 1931 when the German treaties with Yugoslavia and Austria had already come into force, contains an additional protocol providing that the two countries shall approach the German Government, under the terms of the final protocol of their treaties with Germany, with a view to examining the possibility and methods of extending the

arrangements for the maintenance of rights in course of acquisition to the reciprocal relations between the three countries. It also provides that the Austrian and Yugoslav Governments shall similarly examine the question of the extension of reciprocity to any third State with which one of the contracting States subsequently concludes a treaty governing the maintenance of rights in course of acquisition.

The treaty between Germany and Poland also, signed in June 1931, provides in Article 32 for the event of one of the two countries concluding a social insurance treaty with a third. In such case the central administrative authorities must consider whether the contribution periods spent in the third State shall be taken into account for the maintenance of rights in course of acquisition, the calculation of the qualifying period, and the assessment of benefit.

The treaty between Germany and France, signed in July 1932, provides for the maintenance of rights in course of acquisition between the pension schemes in force in Germany, France, and the Saar Territory, the Governing Commission of the Saar Territory having announced its adherence to the treaty with the agreement of the contracting parties.

The last stage in this development, i.e. the automatic extension of bilateral arrangements for reciprocity to the insurance schemes of a third country with which one of the others has concluded a treaty, is illustrated by the treaties between France and Italy (August 1932) and Spain and France (November 1932), which provide that insurance periods which must be taken into account by one of the contracting countries under agreements concluded with third countries must also be taken into consideration by that country in its relations with the other party.

Equivalence of Insurance Schemes

The arrangements for the maintenance of rights set up by bilateral agreements do not afford the same degree of protection to all the workers whom they cover, since the system of maintenance does not apply with equal thoroughness between all the insurance schemes which it comprises.

A general principle which emerges from a study of the treaties is that the system of maintenance operates without restriction only between equivalent schemes of the two countries, whereas a migrant transferring from one national scheme to another which

does not correspond to it in the other country retains only the rights based on his contributions in the first country. In other words, for the maintenance of the validity of contributions, insurance periods are added together irrespective of the nature of the schemes under which they were spent; but for the acquisition of rights under a special scheme, only those insurance periods spent under a corresponding scheme in the other country are taken into account.

This principle is based on considerations of equity. Special schemes often provide certain advantages over and above those granted under the general scheme of the same country; for instance, higher cash benefits and in particular higher minimum pension rates, and more liberal conditions of award as regards the definition of invalidity, the pensionable age, and the dependants entitled to pensions. On the other hand, these schemes usually prescribe higher contributions and sometimes a longer and stricter qualifying period. Transfer from a general to a special scheme must not be effected at the latter's expense, a principle which is also expressed in the national legislation regulating the passage of insured persons from a general to a special scheme in the same country. The enjoyment of the particular advantages provided by a special scheme is conditional on the payment of a minimum number of contributions under that scheme, calculated without regard to contributions paid under other schemes. If insured persons only recently transferred to a special scheme could base claims, as against that scheme, on their insurance under the general scheme, they would have an unfair advantage over the workers who had been constantly insured under the special scheme and had probably paid higher contributions throughout their working life.

This consideration of equity also arises in the international sphere, and bilateral treaties take steps to safeguard the interests of the special schemes and of their members.

In the treaties restricted to a single occupational scheme in each contracting country, such as those concerning miners' pensions between Belgium and France, Belgium and Poland, and France and Poland, the arrangements for the maintenance of rights by definition apply only to insured persons transferred from the special scheme of one country to the special scheme of the other. The fact that these treaties also to some extent affect the general schemes to which miners also belong is due to the action of national laws providing that all or certain groups of miners shall be insurable under the general as well as the special scheme.

In the treaties which cover several or even all the insurance

schemes in force in the contracting countries, complete reciprocity in respect of the totalisation of insurance periods is usually established only between the corresponding schemes of the two countries. As a rule, the full protection afforded by the treaty is extended only to insured persons who pass from a scheme in one of the countries to the corresponding scheme in the other. The effects of this principle on the calculation of the qualifying period, the maintenance and recovery of rights, and the right to enter voluntary insurance will be analysed in the next chapter, which deals with the totalisation of insurance periods. The point is touched on here only in so far as the question whether complete or partial equality of treatment is granted in respect of insurance periods under different schemes affects the scope of the arrangements for the maintenance of rights.

From the standpoint of their technique, treaties which cover several or all the insurance schemes of the two contracting countries may be classified in three groups.

The first comprises those treaties which make no distinction between the general and special schemes to which they apply, and includes those between Belgium and the Netherlands, and Italy and Yugoslavia. Here the violation of the principle described above is more apparent than real. The treaty between Belgium and the Netherlands applies on the Belgian side to the schemes for insurance against old age and premature death for workers and salaried employees, and on the Netherlands side to the general invalidity, old-age and survivors' insurance scheme, the maintenance of rights in course of acquisition under the special miners' pension schemes of the two countries being reserved for a special agreement. As the pensions under the Belgian schemes for workers and salaried employees are fixed entirely in relation to the contributions paid on account of each insured person, there was nothing to prevent the establishment of complete reciprocity with the general Netherlands scheme. The treaty between Italy and Yugoslavia, on the other hand, applies to schemes differing considerably from each other; but adequate precautions were taken in the treaty itself to equalise its operation. Thus, to prevent any difficulties arising out of the disparity between the length of the qualifying periods prescribed by the insurance schemes of the two countries, it was agreed that the qualifying period should be deemed to have been completed when the insurance periods spent in each of the two countries, expressed as fractions of the qualifying period in the respective countries, should together be equal to unity.

The second group comprises treaties by which complete reciprocity is established only between the corresponding schemes of the two countries, the insurance periods spent under a non-corresponding scheme in the second country maintaining the validity of contributions paid in the first in the same way as insurance periods spent under a similar scheme in the first country. Thus, in the case of migrants transferred from the special scheme of country A to the general scheme of country B, the periods spent under the general scheme of country B serve merely to maintain the rights in course of acquisition under the special scheme of country A, just as if the said insurance periods had been spent under the general scheme of country A. In other words, when verifying the maintenance of pension rights under any one of the schemes covered by the bilateral arrangements, each country takes into account the time spent in insurance in the other in the same way as if it had been spent under its own corresponding scheme. On the other hand, for the calculation of the qualifying period and the minimum number of contributions conferring the right to a pension, each institution takes into account only the insurance periods completed under the corresponding scheme of the other country.

This method has been adopted in the treaties between Germany and Austria, Germany and Poland, Germany and Czechoslovakia, Germany and Yugoslavia, Austria and Czechoslovakia, and Austria and Yugoslavia, which establish complete reciprocity only between the corresponding schemes of the contracting countries. Thus, the German treaties with Poland and Czechoslovakia provide for reciprocity between the workers' schemes of each country and also between the salaried employees' and between the miners' schemes of each country. The other four treaties adopt the same system as regards the salaried employees' schemes and the miners' schemes of each country. The treaty between Germany and France, though following slightly different lines, must also be included in this group; it provides that, in calculating the qualifying period and the number of contributions entitling the insured person to the special advantages of an occupational scheme, only those insurance periods spent under a corresponding occupational scheme in the other country may be taken into account. This restriction does not, however, apply in respect of the maintenance of rights, all insurance periods spent under any scheme, whether corresponding or not, being taken into account for this purpose.

The third group consists of the treaties between Spain and France and France and Italy, which have adopted a variation of the

system described above allowing of its application between countries of which only one has a special scheme for a given occupation. They provide that, if a special scheme for a given occupation exists in one country and not in the other, the totalisation of contribution periods spent in that occupation, even under a non-corresponding scheme, shall be allowed in calculating the qualifying period under the special occupational scheme. This system owes its flexibility to the fact that the time spent in the specified occupation under the general insurance scheme in one country is placed on the same footing as the time spent under the special occupational scheme in the other country; and it appears to safeguard the interests of all parties, provided that proof is furnished of the insured person's actual employment in the occupation concerned.

§ 2. — Nationality of Beneficiaries

The principal object of the earlier bilateral treaties dealing with pension insurance was to establish equality of treatment between the nationals of the contracting countries, and they thus covered only those persons who were nationals of one of the two countries and their dependants. When it became necessary later to complete the bilateral treaties by provisions for the maintenance of rights in course of acquisition of workers transferring from the insurance scheme of one country to that of the other, the benefit of these provisions also was reserved for the nationals of the contracting countries.

This accounts for the fact that in a number of treaties designed to introduce both equality of treatment and the maintenance of rights in course of acquisition the scope of the respective two sets of provisions is the same. Migrants who are nationals of neither of the two contracting countries are not entitled to the protection afforded by the treaty in respect of the maintenance of rights.

The provisions for the maintenance of rights in course of acquisition apply only to the nationals of the two contracting countries under the treaties between Austria and France, Belgium and France (miners), Belgium and the Netherlands; Belgium and Poland (miners), France and Poland (general and miners), and Italy and Yugoslavia.

All the other treaties providing for the maintenance of rights follow an entirely different policy, extending their provisions to all workers and their dependants irrespective of nationality. In these

treaties the maintenance of rights is no longer looked upon as a privilege reserved exclusively for the nationals of the contracting countries, but as an objective principle guaranteeing that every insured person shall receive a return for the contributions paid on his account and that the cost of benefit shall be shared among the insurance institutions in proportion to the contributions they have received.

The first treaty to include all insured persons, without distinction of nationality, within the arrangements for the maintenance of rights was that between Germany and Austria, concluded on 8 July 1926 and subsequently replaced by a treaty of 1930 with the same scope. This example was followed by the treaties between Germany and France, Germany and Poland, Germany and Czechoslovakia, Germany and Yugoslavia, Austria and Czechoslovakia, Austria and Yugoslavia, Spain and France, and France and Italy.

The treaties comprised in this group do not all use the same terms in establishing the maintenance of rights in course of acquisition as a generally applicable principle. A number of treaties use the impersonal method of prescribing that contribution periods shall be added together when contributions on account of an insured person have been paid under the schemes of both countries. The relationship of reciprocity on which the maintenance of rights in course of acquisition is based is here established between the insurance schemes, all persons insured under these schemes being entitled to its advantages. This is the method adopted by the treaties between Germany and Austria (Article 15, Nos. 1 and 2); Germany and Poland (Article 19, No. 1); Germany and Czechoslovakia (Article 16, No. 1); Germany and Yugoslavia (Article 15, No. 1, and Article 18, No. 1); Austria and Czechoslovakia (Article 19, No. 1); Austria and Yugoslavia (Article 18, Nos. 1 and 2). The other treaties belonging to this group, that is, those between Germany and France (Article 9, No. 1), Spain and France (Article 8, No. 1), and France and Italy (Article 8, No. 1), expressly state that the provisions for the maintenance of migrants' rights in course of acquisition shall apply to all workers and salaried employees of whatever nationality.

Most of the treaties on this subject, particularly those concluded in recent years, have abandoned the practice of restricting the maintenance of rights to the nationals of the contracting countries. This restriction in respect of nationals of third States is in fact based on a principle of discrimination which is not easy to justify. The maintenance of rights —the very terms so imply— has nothing

to do with arbitrary largesse, it simply means giving the migrant an opportunity of receiving, under specified conditions, the return for his contributions to which every insured person should be entitled. There is no reason why this opportunity should be denied to the nationals of other countries not parties to a given bilateral treaty, once they are covered by insurance and liable for the payment of contributions.

The maintenance of rights is a measure of equity, not only as regards the insured migrants themselves, but also for the insurance institutions, which are thus enabled to share their liabilities for the total of the periods to be taken into account in the ratio of the contribution periods spent under their respective schemes. When a migrant who was previously insured in country A subsequently completes the qualifying period in country B and claims a pension there, the insurance institution of country B, failing treaty arrangements for the maintenance of rights, pays him a pension based only on the insurance periods spent in that country. As the right to the pension was acquired exclusively under the legislation of country B, no reduction can be made in the fixed benefits or portions of benefits which do not depend on the length of insurance, on account of insurance periods spent in country A. If, on the other hand, such a treaty were in force, the insurance institution of country B would be liable to pay only such fraction of the fixed benefits or portions of benefits as corresponds to the ratio of the contribution periods completed under its scheme to the total contribution periods completed by the migrant; thereby reducing its liabilities. In the case of migrants who are not nationals of either contracting country, this reduction is possible only if the provisions for the maintenance of rights apply to all insured persons irrespective of nationality. The extension of the arrangements for the maintenance of rights to all workers of whatever nationality may thus be called for even in the interests of a fairer distribution of pension liability between the insurance institutions of the contracting countries.

SECTION II

TOTALISATION OF INSURANCE PERIODS

The continuity of the migrant workers' insurance career is provided for by adding together the insurance periods he has completed as a member of the insurance schemes of each contracting country. The totalisation of insurance periods is permissible for

all insurance purposes, in particular for the maintenance of rights in course of acquisition, the calculation of the qualifying period, the minimum period in insurance or number of contributions required to establish the right to benefit, and the right to enter voluntary insurance. Every insurance institution covered by the provisions for the maintenance of rights takes into account, in awarding benefits to migrants, both the insurance periods spent under its own legislation and those spent as a member of any other institution covered by the bilateral arrangements.

The principle of the totalisation of insurance periods for the maintenance of rights in course of acquisition, which is dealt with in the first subsection, enables the migrant to be credited, by any insurance institution whose regulations restrict the period of validity of paid-up contributions, with his contribution periods under any other insurance scheme covered by the treaty arrangements. Within specified limits the migrants may even be credited with insurance periods for which no contributions were paid but which count towards the maintenance of rights in course of acquisition under the legislation of one or both contracting countries. The system of adding together insurance periods protects the migrant from the loss consequent on the lapse of the rights deriving from the contributions paid on his account in the country of emigration. It ensures that these contributions shall not lose their validity, and that the migrant shall retain the rights which are based on them.

The totalisation of insurance periods for the purpose of reckoning the qualifying period, discussed in the second subsection, secures to the migrant another and very substantial advantage. When examining whether the claimant has completed the minimum period in insurance or is credited with the minimum number of contributions required by many social insurance laws as a condition of benefit or for the award of particular advantages, each institution takes into account the claimant's whole career and not merely the period of his membership of the institution concerned. Insurance periods are thus added together even for the purpose of establishing the right to benefit.

The totalisation of insurance periods to determine the right to enter voluntary insurance in either country allows the migrant claiming admission to voluntary insurance to base his claim on the total duration of his insurance career in both countries, whenever voluntary insurance is open only to persons who have been compulsorily insured for a certain time and have a certain number of

contributions standing to their credit. The totalisation of insurance periods offers the migrant worker exceptional facilities for fulfilling the conditions of admission to voluntary insurance, facilities which may be of special value to migrants who are not liable to compulsory insurance in the country to which they migrate.

§ 1. — Totalisation for Maintaining Rights in Course of Acquisition

Under those pension schemes in which each contribution unit constitutes a single premium purchasing a deferred annuity, the validity of each contribution is theoretically unrestricted and independent of the amount and date of subsequent payments. Each contribution unit confers in itself the right to the benefit provided under the insurance law, on the sole condition that the event insured against happens—a right which is indeed a latent and deferred one, but does not depend on any subsequent payments. In schemes based on this system each contribution automatically retains its validity and no special precautions are necessary, either on the part of workers who remain in the country of the insurance institution or of those who take up their residence abroad, in order to maintain the validity of the contributions paid on their behalf.

Under a number of pension insurance schemes, however, the contribution is not so calculated as to constitute a single premium for a deferred annuity. Financial stability, especially in schemes under which a specific benefit is guaranteed to every insured person who has completed the qualifying period, can be secured only on condition that contributions in respect of every insured person are paid more or less regularly throughout his working life. Under such schemes the payment of a contribution to the insured person's credit does not carry with it an unconditional right to benefit, but merely the chance to acquire this right subject to the maintenance of the validity of the contribution. This validity is maintained only for a certain term dating from the cessation of compulsory insurance liability; once this term has elapsed the contributions cease to count unless payments are resumed. The rights which the workers leaving insurance were in the course of acquiring lapse, and the contributions corresponding to these rights are used for the benefit of persons who remain members.

The term of free maintenance of the validity of contributions, irrespective of any subsequent payments, may be fixed either absolutely or relatively, according to the legislation concerned.

Where this term is an absolute one, it is fixed without regard to the length of the insured person's insurance career and the number of contributions paid on his account and may vary for all insured persons from twelve to eighteen months from the date of the last contribution paid; that is to say, an insured person who suspends payment of his contributions for twelve or eighteen consecutive months will lose the credit for the contributions already standing to his name, whether they number 50, 500 or 1,000.

When the term is fixed relatively, it depends on the number of contributions standing to the worker's credit and may, for instance, be one-third of his contribution periods. A worker in respect of whom contributions have been paid uninterruptedly for sixty months will thus retain the credit for his contributions for a period of twenty months dating from the last payment.

Finally, there is a third arrangement, whereby the period for which contributions remain valid without further payment is fixed in proportion to the contribution period, but subject to a specified minimum; for instance, a quarter of the contribution period but not in any case less than eighteen months. This provision protects both insured persons who have paid contributions over a number of years and those who have only a few payments to their credit.

The severity of the provisions limiting the term of validity of contributions is relaxed under a number of schemes in respect of workers who have ceased to be liable to insurance through no fault of their own. The maintenance of the rights which these workers are in the course of acquiring may be allowed on easier conditions than are generally required.

Beyond the term of free maintenance described above, the validity of contributions can theoretically be maintained only by the payment of further contributions under compulsory or voluntary insurance. Several social insurance laws, however, place certain other periods, such as periods of temporary incapacity for work due to sickness or childbirth and periods of involuntary unemployment, on the same footing as actual contribution periods; for the purpose of maintaining rights these periods are deemed to be contribution periods even if the insurance institution has not received the corresponding payments.

Another method adopted under the legislation of certain countries consists in suspending the currency of the term during which the validity of contributions is maintained for the duration of any periods during which the insured person is drawing benefit under schemes for sickness and maternity insurance, workmen's compensation

or unemployment insurance. These periods are not included in the term of free maintenance, which is thus prolonged to an equivalent extent. If, for example, the term of protection for all insured persons is 18 months, a worker who was in receipt of sickness benefit for two months following the cessation of his membership of the pension insurance scheme would be entitled to have his rights under this scheme maintained until the end of the twentieth month following the date on which he ceased to be liable to insurance.

Schemes as between which Totalisation Applies

The requirement of maintenance of rights in course of acquisition is a severe one, and a worker who does not fulfil it when the event insured against occurs forfeits thereby his right to a pension. This condition may be particularly serious for migrants who continue to engage in paid employment in the country of immigration and thus remain in the social classes for which the protection of insurance is a vital necessity. Attempts are therefore made in bilateral treaties to relax its severity by framing a wide definition of the schemes as between which the totalisation of insurance periods is to be effected for the purpose of maintaining rights. This is true of all the treaties which aim at regulating bilateral relations in this sphere, where the condition of the maintenance of rights is required by at least one of the schemes covered by their arrangements.

These treaties pursue their common object of facilitating the maintenance of migrants' rights in course of acquisition by two rather different methods.

The first allows of the totalisation of insurance periods spent under any scheme in either of the two contracting countries. In this case no question is raised as to the equivalence of the two schemes, the rights which migrants may acquire under a general or special occupational scheme in one of the countries being maintained in virtue of insurance periods spent whether under a general scheme or under a special occupational scheme in the other. This generous formula is adopted in the treaty between Spain and France (Article 8, No. 1), France and Italy (Article 8, No. 1), and Italy and Yugoslavia (Article 17, No. 2). A similar line is taken by the Franco-Polish treaty on miners' pensions (Article 21, No. 1), which lays down among the special provisions for Polish legislation (Poland being the only one of the two countries where the mainte-

nance of rights is required) that insurance periods in France shall be taken into account in respect of the maintenance of rights under all the Polish insurance schemes, i.e. the general invalidity, old-age and survivors' insurance scheme, the special scheme for miners, and the special scheme for salaried employees.

Other treaties (Germany-Austria, Germany-France, Germany-Poland, Germany-Czechoslovakia, Germany-Yugoslavia, Austria-Czechoslovakia, Austria-Yugoslavia) are not so broad in this respect, since they provide directly and unconditionally for the maintenance of rights only between corresponding schemes of the contracting countries; as regards schemes which do not correspond, arrangements are made only indirectly by the treaties, the matter being referred within certain limits to the national legislation of the contracting countries.

The treaties of this group prescribe the totalisation of insurance periods for the maintenance of rights as between the general pension schemes of each country (e.g. Germany-Austria (Article 17, No. 1), Germany-Poland (Article 19, No. 1), Germany-Czechoslovakia (Article 16, No. 1)); between the special schemes for salaried employees in the two countries (e.g. Germany-Austria (Article 15, No. 2), Germany-Poland (Article 23, No. 1), Germany-Czechoslovakia (Article 17), Germany-Yugoslavia (Article 18, No. 1), Austria-Czechoslovakia (Article 19, No. 1), Austria-Yugoslavia (Article 18, No. 2)); or between the special schemes for miners (e.g. Germany-Austria (Article 19, No. 1), Germany-France (second supplementary agreement), Germany-Poland (Article 26, Nos. 1 and 8), Germany-Czechoslovakia (Article 17), Germany-Yugoslavia (Article 18, No. 1), Austria-Czechoslovakia (Article 27), Austria-Yugoslavia (Article 27)).

As regards the totalisation of insurance periods as between non-corresponding schemes, most treaties refer the matter to the provisions of national legislation governing the maintenance of the rights of insured persons transferred from one insurance scheme to another in the same country. In order to determine whether migrants' rights in course of acquisition have been maintained, each institution takes into account the periods of insurance spent under a scheme in the other country to the same extent as if they had been spent under the equivalent scheme of the country in which the institution concerned is established. In other words, rights in course of acquisition under an occupational scheme of country A are maintained in virtue of insurance periods spent under the general scheme of country B to the same extent as if

they had been spent under the general scheme of country A; and in order to determine whether and to what extent provision is made for the maintenance of rights as between the different schemes of country A, recourse must be had to the country's national legislation. Reference to the national law of the contracting countries as regards the totalisation of insurance periods spent, for instance, under the general scheme of one country and the special salaried employees' scheme of the other is prescribed by the treaties between Germany and Austria (Article 18, Nos. 1 and 2), Germany and Poland (Article 27), Germany and Czechoslovakia (Article 19), Germany and Yugoslavia (Article 27). The same method of reference to national law is prescribed as regards the maintenance of rights in course of acquisition under the salaried employees' scheme of one country by insurance periods spent under the general scheme or the occupational scheme for miners in the other. As, however, the national law of most countries provides for the maintenance of the validity of contributions paid in respect of workers who transfer from one insurance scheme to another within the country, the migrants covered by the treaties in this group also share very largely in the same facilities.

Insurance Periods to be Totalised

Contribution Periods

All treaties provide without any restriction for the totalisation of periods for which insurance contributions were paid in respect of the migrant under either compulsory or voluntary insurance. Apart from contribution periods proper, provision is also made for the totalisation of periods for which no contributions were paid, but which were covered by equivalent payments, and to the extent to which they were so covered, i.e. periods made up by a lump-sum payment upon entry into insurance, periods of military service on account of which State payments were made, periods of unemployment covered by payments out of unemployment insurance funds or unemployment guarantee funds. All these periods are equivalent to actual contribution periods, the insurance institution having received payment against the rights which they confer.

The following example illustrates the system of addition. A worker in respect of whom contributions were paid in country

A from 1 January 1925 to 31 December 1928, and in country B from 1 May 1930 to 30 April 1931, becomes disabled on 1 January 1932. Under the law of country A his contributions remain valid for eighteen months, dating from the last payment, and under that of country B for a period equal to half the total contribution periods completed since he first entered insurance. Failing a treaty of reciprocity, credit for all these contributions would be lost in both countries; but thanks to totalisation the rights in course of acquisition are maintained in each, the period of free maintenance of eighteen months prescribed in country A having been interrupted by the contributions paid in country B and the period for which the contributions remain valid in country B amounting to fourteen months [(48 + 12) ÷ 2 — 16] and consequently extending up to 30 June 1932.

Periods Assimilated to Contribution Periods

As already stated, a number of national laws assimilate to contribution periods other periods for which the insurance institution receives no payment. This assimilation may be total or partial. In the latter case, the periods are counted as equivalent to a fraction of their total length only, for example, half or one-third. These assimilated periods are deemed to have been contribution periods, and the period of free maintenance of rights in course of acquisition is correspondingly extended. To the question whether the assimilated periods are to be totalised on the same footing as actual contribution periods, the answer must be that each insurance institution must settle this point in accordance with its own legislation, since otherwise migrants would be deprived of an advantage enjoyed by other insured persons.

What, however, is the situation as regards insurance periods which are placed on the same footing as contribution periods by the insurance legislation of only one of the contracting countries ? In other words, must the assimilated periods allowed under the legislation of at least one of the insurance institutions concerned be included, or only those recognised by the law governing the institution which is responsible for making the calculations? Some treaties make no distinction between contribution periods and assimilated periods and do not explicitly require that the latter shall be placed on the same footing by all the insurance schemes covered by the system of reciprocity. Examples of this group are the treaties between Germany and France (Article 9, No. 1, and

first supplementary agreement, Article 14), and Spain and France (Article 8, No. 1). The treaties concerning miners' pensions between Belgium and Poland (Article 16, No. 1) and France and Poland (Article 21, No. 1) stipulate in their special provisions for Polish legislation (the only one requiring the condition of the maintenance of rights) that both contribution periods and recognised assimilated periods spent in the other contracting country shall be taken into account for the maintenance of rights under the Polish scheme.

A different method is adopted by certain other treaties, which apply the principle that only those periods recognised as assimilated periods by the national legislation of each contracting country shall in any circumstances be taken into account, each institution dealing with assimilated periods in accordance with its own legislation. In the light of this principle several treaties stipulate that periods of sickness which count towards the maintenance of rights in course of acquisition in one country shall have the same effect in the other, e.g. Germany-Austria (Article 15, No. 3), Germany-Yugoslavia (Article 15, No. 2, and Article 18, No. 2), Austria-Czechoslovakia (Article 19, No. 2), Austria-Yugoslavia (Article 18, No. 3).

Finally, there are other treaties which do not take into account any assimilated periods, or, like that between Germany and Czechoslovakia (Article 16, No. 1), confine themselves to prescribing that the institutions of each country shall follow the rules of their own legislation in determining what periods other than contribution periods may be taken into account.

Periods during which a Pension is Paid in the Other Country

The conditions for the award of pensions under the various schemes covered by the arrangements for reciprocity may and do differ, particularly as regards the definition of invalidity, the age at which the old-age pension falls due, and the dependants entitled to pensions. In one country, for instance, the migrant may be granted an old-age pension on attaining his sixtieth year of age, while in the other the pension may not in any circumstances be payable before the age of sixty-five years. Thus, while drawing a pension in the first country the migrant might lose the credit for his contributions in the other.

In order to ensure the normal operation of the machinery for

the maintenance of rights, rights in course of acquisition in one country must be maintained while the migrant is drawing an invalidity or old-age pension in the other. Clauses to this effect are found in particular in the following treaties: Germany-Austria (Article 15, No. 3), Germany-France (second supplementary agreement, Article 13, No. 2), Germany-Poland (Article 19, No. 3), Germany-Czechoslovakia (Article 16, No. 4), Germany-Yugoslavia (Article 15, No. 2, and Article 18, No. 2), Austria-Czechoslovakia (Article 19, No. 2), Austria-Yugoslavia (Article 18, No. 2). The treaties concerning miners' pensions between Belgium and Poland (Article 16, No. 1) and France and Poland (Article 21, No. 1) also lay down in the special provisions applying to Polish legislation that insurance periods during which insured persons receive benefit under the miners' insurance scheme of the other country shall be taken into account for the maintenance of pension rights under the Polish insurance scheme as periods in this latter scheme.

Continuation Fees

Under a few general and a good many special miners' schemes persons who cease to be liable to compulsory insurance may maintain their rights in course of acquisition (in so far as such rights are not or are no longer automatically maintained) by periodically paying a small fee, known as a continuation fee. Once provision has been made between two countries for the maintenance of rights in course of acquisition, there is no necessity for the payment of a continuation fee in one country while the validity of the paid-up contributions in that country is maintained on the strength of insurance periods spent in the other. This is a logical conclusion from the principle of the totalisation of insurance periods. It is expressly stated in some treaties, in particular the treaties on miners' pensions between Belgium and Poland (Article 16, No. 2*c*), and France and Poland (Article 22). The continuation fee prescribed under Polish legislation is not payable for periods during which the workers covered by the treaty are employed in the other contracting countries by an undertaking covered by the miners' pension scheme.

Another question also arises in connection with the continuation fee. When a migrant pays a continuation fee in one country to prevent the lapse of rights in course of acquisition there, does he thereby also maintain his rights in the other country ? The solutions to this problem laid down by the treaties, that is to say, by those

treaties which apply to schemes at least one of which provides for the payment of a continuation fee, do not all agree.

The second supplementary agreement under the treaty between Germany and France, relating to special miners' pension schemes, provides (Article 13, No. 1) that rights in course of acquisition with any one of the insurance institutions connected with a miners' scheme shall remain valid so long as the insured person pays a continuation fee to a miners' insurance institution in the French Departments of the Upper or Lower Rhine or the Moselle, in Germany, or in the Saar Territory. The treaty between Austria and Yugoslavia (Article 18, No. 2) similarly lays down that periods on account of which continuation fees are paid in one country (this faculty is allowed by the Yugoslav scheme only) shall be taken into account for the maintenance of rights in course of acquisition in the other.

A different solution is adopted by the treaty between Germany and Poland (Article 26, No. 6) establishing reciprocity between the miners' pension schemes. Payment of a continuation fee in one country does not normally secure the maintenance of rights in course of acquisition in the other; but during periods of involuntary unemployment the continuation fee need be paid only to the insurance institution to which the migrant last belonged and serves in this case to maintain rights in course of acquisition in the other country.

A special arrangement is laid down by the treaty between Austria and Czechoslovakia (Article 19, No. 2), whereby periods on account of which a continuation fee is paid in Czechoslovakia (this fee having been abolished under Austrian legislation) do not maintain rights in course of acquisition under the Austrian scheme unless the event insured against takes place during such periods, or unless they are immediately followed by contribution periods. A further restriction which may be mentioned in passing is that the right to pay continuation fees in Czechoslovakia is restricted to insured persons with sixty paid-up monthly contributions to their credit, at least thirty of which must be compulsory contributions, the inclusion of insurance periods spent in Austria not being allowed for this purpose (Article 19, No. 1).

The treaty between Germany and Yugoslavia (Article 22, No. 2) gives a negative ruling on this point, prescribing that when insurance liability has expired payment of continuation fees to the miners' fund of one country does not secure maintenance of rights in the other.

Recovery of Rights

Social insurance laws which allow the free maintenance of rights in course of acquisition for a certain term only, and subject to the resumption of payments under compulsory or voluntary insurance or at least to the payment of continuation fees, usually allow the insured worker an opportunity of recovering his lost rights by the payment of a specified number of fresh contributions. The strictness of the conditions for the recovery of rights by this means varies with different legislations. The number of new contributions required must reach a specified minimum, which may sometimes vary with the age of the insured person when payments are resumed or with the length of the interruption in payments. If payments are interrupted for a very long period, for instance for more than 10 years, the rights which have lapsed may be lost beyond recovery.

The provisions governing the recovery of rights under national legislation are of particular interest to migrants whose insurance career is interrupted by each change of country and employment. A number of treaties applicable to insurance schemes under which facilities are provided for the recovery of lost rights therefore lay down that insurance periods completed in either country may be taken into account for this purpose. This is so in the treaties between Germany and France (Article 9, No. 1), Germany and Poland (Article 19, No. 1), Spain and France (Article 8, No. 1), and France and Italy (Article 8, No. 1). The treaty between Italy and Yugoslavia follows the same lines, prescribing that the effect of the resumption of compulsory insurance payments in re-establishing rights in course of acquisition shall operate even if such payments are resumed with an insurance institution in the other contracting country (Article 17, No. 2). The treaties concerning miners' pensions between Belgium and Poland (Article 16, Nos. 1 and 2*b*) and France and Poland (Article 21, No. 2*c*, and Article 23) contain provisions relating specially to the Polish scheme and intended to facilitate the recovery of lost rights under that scheme in virtue of employment in mining work in the other contracting country.

§ 2. — Totalisation for Reckoning Qualifying Period

The object of the qualifying period differs in respect of benefits under invalidity and survivors' insurance on the one hand and old-age insurance on the other.

In invalidity and survivors' insurance the condition of a qualifying period is essential whenever a minimum benefit, sufficient to cover the risk, is guaranteed on the happening of the event insured against. Even though this condition does not enable a proper ratio to be established between the guaranteed minimum benefit and the value acquired by the contributions corresponding to the qualifying period (since this minimum is usually much higher than the value of the contributions), it serves at least to eliminate the worst risks and to prevent last-minute affiliations when the event to be insured against is already imminent.

As regards old-age insurance, the object of the qualifying period is either to establish a ratio between the guaranteed benefits and the sum represented by the number and amount of paid-up contributions and the length of the insurance period, or again to prevent the affiliation of persons who are not genuinely engaged in insurable employment. The only schemes which can waive the condition of a qualifying period are those under which the pension awarded to each insured person is based on the accumulated value of the contributions standing to his account.

To complete the qualifying period a minimum number of contributions must be paid, either from the date of the worker's entry into insurance (e.g. sixty contribution months to be completed between the age of sixteen years until the event insured against occurs) or within a specified period immediately preceding the happening of the event (e.g. thirty contribution months during the four calendar years immediately preceding the certification of invalidity), according to the legislation concerned. These two kinds of provisions, either separately or combined, govern the qualifying period in invalidity and survivors' insurance and in a number of old-age insurance schemes as well.

In addition to prescribing a qualifying period as a condition for the award of a pension, several laws also make the granting of certain advantages contingent on the length of insurance and the number of paid-up contributions. Examples which may be cited in this respect are the special conditions as to contributions which must be fulfilled by claimants to the minimum old-age pension under the general scheme in France, and to the bonuses provided under the Belgian old-age and survivors' pensions scheme, both being schemes which omit the condition of a qualifying period for the award of old-age pensions constituted by accumulation in individual accounts. Mention may also be made of the special conditions as to contributions prescribed by certain salaried

employees' insurance schemes, and those relating to the length of employment contained in most miners' schemes, conferring the right to the premature payment of the old-age pension without reduction.

Applied to the calculation of the qualifying period and to similar conditions of benefit, the principle of the totalisation of insurance periods leads to the taking into account of periods in insurance and periods in employment spent in different countries. Their inclusion in calculating the qualifying period is an essential part of the machinery for the maintenance of rights in course of acquisition, as provided for under all the treaties considered in this chapter. When examining whether the conditions governing the qualifying period or the special conditions conferring a right to particular benefits are fulfilled, each insurance institution takes into account, not only insurance periods spent under its own law, but also those spent with any institution in the other country covered by the arrangements for the maintenance of rights. The whole time spent in insurance is thus treated as an unbroken sequence, and the migrants' rights are assessed on the basis of the aggregate insurance periods spent in the contracting countries.

Schemes as between which Totalisation Applies

The selection of the schemes between which the totalisation of insurance periods is effected for the calculation of the qualifying period is governed by the principle of equivalence. This subject has already been dealt with, and it is therefore only necessary here to note that the qualifying period forms a barrier to prevent persons who had only recently entered insurance from obtaining pensions fixed independently of the duration of insurance or to guaranteed minimum benefits. The qualifying period prescribed by national laws as a check against persons who do not fulfil specified conditions as to length of membership and contribution periods also applies in the international sphere in the relations between general schemes and occupational or other special schemes. The latter provide, in return for higher contributions, larger fixed pensions or guaranteed minimum benefits than the former, subject to the condition of a qualifying period completed entirely in the occupational or other special scheme concerned. This principle of equity is expressed in the treaties providing for the maintenance of rights, by the rule prescribing that, in reckoning the qualifying period, the totalisation of insurance periods shall theoretically

apply only as between the corresponding schemes of the contracting countries.

The importance of this rule of equivalence in the different treaties varies according to the structure of the insurance schemes in the countries concerned.

In the group of treaties between countries which have established, in addition to their general pension insurance scheme, special schemes for non-manual workers and for miners, the principle of equivalence appears in the actual substance of the treaties. The special relation of reciprocity implied by the totalisation of insurance periods for the calculation of the qualifying period is established only between the corresponding schemes of the contracting countries. This method is used in the following treaties: Germany-Austria, Germany-Poland, Germany-Czechoslovakia, Germany-Yugoslavia, Austria-Czechoslovakia, Austria-Yugoslavia. It is also applied in the first supplementary agreement under the Franco-German treaty.

The various schemes between which the totalisation of insurance periods in reckoning the qualifying period is provided for under this group of treaties are shown below:

GERMANY	AUSTRIA
(*a*) Salaried employees.	(*a*) Salaried employees.
(*b*) Miners: Salaried employees.	(*b*) Salaried employees.
(*c*) Miners: Workers.	(*c*) Miners.
(*d*) Salaried employees; and Miners: Salaried employees.	(*d*) Miners.
(*e*) Miners: Workers.	(*e*) Salaried employees.

GERMANY	POLAND
(*a*) Workers.	(*a*) Workers.
(*b*) Salaried employees.	(*b*) Intellectual workers.
(*c*) Miners: Workers.	(*c*) Miners: Workers.
(*d*) Miners: Salaried employees.	(*d*) Miners: Workers.
(*e*) Miners: Salaried employees.	(*e*) Intellectual workers.

GERMANY	CZECHOSLOVAKIA
(*a*) Workers.	(*a*) Workers.
(*b*) Salaried employees.	(*b*) Salaried employees.
(*c*) Miners: Salaried employees.	(*c*) Salaried employees.
(*d*) Miners: Workers.	(*d*) Miners: Workers.

GERMANY	YUGOSLAVIA
(*a*) Salaried employees.	(*a*) Salaried employees.
(*b*) Miners: Workers.	(*b*) Miners.
(*c*) Miners: Salaried employees.	(*c*) Miners.
(*d*) Workers; and Miners: Salaried employees.	(*d*) Salaried employees.

AUSTRIA

(*a*) Salaried employees.
(*b*) Miners.

CZECHOSLOVAKIA

(*a*) Salaried employees.
(*b*) Miners.

AUSTRIA

(*a*) Salaried employees.
(*b*) Miners.
(*c*) Miners.
(*d*) Salaried employees.

YUGOSLAVIA

(*a*) Salaried employees.
(*b*) Miners.
(*c*) Salaried employees.
(*d*) Miners.

The principle of equivalence is in general strictly observed, but certain exceptions appear to have been allowed as regards the relation between some miners' schemes applicable to both workers and employees in mining undertakings and some special salaried employees' schemes (Germany-Austria, *d* and *e*, Germany-Poland, *d*, Austria-Yugoslavia, *c* and *d*). These exceptions, however, are more apparent than real, since in every case the higher basic pension provided under the salaried employees' scheme is awarded only to workers who have completed the qualifying period under that scheme or under the corresponding scheme of the other country, or again in virtue of the totalisation of the insurance periods completed under both these schemes. In other words, as regards the principal advantage attached to the completion of a qualifying period, totalisation is allowed only between the corresponding schemes of the two countries.

In a second group of treaties a very similar result is obtained by a different method. Here the totalisation of insurance periods in calculating the length of membership or employment and number of paid-up contributions with a view to determining the right to benefit is theoretically allowed as between all the insurance schemes covered by the treaty arrangements. But this rule is subject to an important restriction based on the principle of equivalence: if under national law the conditions of award of certain benefits require that all insurance periods must be spent in an employment covered by a special scheme, only periods spent under corresponding special schemes may be taken into account in determining the rights of migrants to such benefits. This method is adopted, in particular, in the treaties between Spain and France (Article 8) and France and Italy (Article 8).

Apart from the special treaties concerning miners' pension schemes, there remain the treaties between Belgium and the Netherlands and Italy and Yugoslavia, which can waive the rule of equivalence for reasons connected with the composition of benefits under the schemes concerned.

Effects of Totalisation

It has already been stated that, when determining whether the qualifying period prescribed under its legislation has been completed, every insurance institution takes into account both the insurance periods spent under its own scheme and those spent as a member of any insurance institution of the other country covered by a scheme accepted for the purpose of reckoning the qualifying period. If the total length of these periods is sufficient, the qualifying period is deemed to be completed.

It follows from this that, while taking into account all the insurance periods eligible for consideration, each institution observes its own national law as regards the length of the qualifying period. For instance, if the qualifying period under the law of country A is three years and under that of country B five years, the migrant may be awarded a pension in the first country as soon as he has completed the qualifying period of three years, the insurance institution of the second country not being required to intervene until the longer qualifying period prescribed under its own law has been fulfilled. This method is accepted by the great majority of treaties.

When, however, there is too great a disparity between the respective lengths of the qualifying periods, e.g. if it is three years in country A and ten years in country B, the insurance institution of one country might often have to pay out benefit while that of the second was still free from liability. In these circumstances, as already described, a system of equalisation is adopted, insurance periods spent in each country being expressed as a fraction of the respective qualifying period, which is deemed to be completed only when the sum of the fractions so obtained is equal to the whole.

This rule is applied in the treaties between Italy and Yugoslavia (Article 15), and also to the relations between the miners' pensions schemes of Austria and Yugoslavia (Article 27).

The way in which this rule operates in the case of two countries in which the qualifying period is fixed at 36 and 120 months respectively may be illustrated by the following example of when a pension is due:

$$\frac{ma}{36} + \frac{mb}{120} = 1$$

(*ma* represents the contribution months in country A and *mb* those in country B.) Hence, if sixty contribution months have

been completed in country B, at least eighteen must be completed in country A, or twenty-four if only forty months were spent in country B.

In other respects, too, the disparity between different national laws may be such that exceptions must be made to the principle of totalisation in respect of certain conditions relating to employment and contributions, each institution then taking into account only the insurance periods completed under its own scheme. Examples of such exceptions are those allowed by several of the treaties concluded by Germany in connection with the award of the old-age pension under the German miners' scheme, which may be paid at the age of fifty years when certain conditions of service are fulfilled. As there is nothing corresponding to this pension in the other contracting countries, it is stipulated that the special qualifying period required as a condition of its award must, as an exception to the principle of totalisation, be completed wholly in the country of the insurance institution. This exception is provided for in these terms in the treaties between Germany and Austria (Article 19, No. 1) and Germany and Poland (Article 26, No. 2). That between Germany and Yugoslavia is more explicit, providing under Article 19 that, up to the end of the fifty-fifth year of age of a miner entitled to claim the special pension, the German insurance institution may only take into account contribution months completed under its own regulations, but, from the first day of the month during which the insured person reaches the age of fifty-five years, his insurance periods may be added together in conformity with the provisions of the treaty. The treaty between Italy and Yugoslavia (Article 25, No. 2) frames this exception in general terms, providing that the payment of benefits prescribed by the law of only one of the contracting countries is governed by the conditions laid down in its own law.

What has been said in regard to the qualifying period proper applies equally in respect of the conditions relating to membership and contributions which under certain schemes confer the right to special benefits. The insured person is entitled to these benefits as soon as the requisite conditions are fulfilled by the addition of all his insurance periods.

Among special conditions of this kind mention may be made, by way of example, of those enumerated in the treaties between Germany and Austria (Article 15, No. 2), Austria and Czechoslovakia (Article 19, No. 1) and Austria and Yugoslavia (Article 18, No. 2), relating to the special number of contribution months

conferring the right to earlier payment of the old-age pension under certain schemes for salaried employees; in the treaty between Belgium and France (miners, Article 5, No. 1), relating to the total length of employment conferring the right to bonuses intended to bring allowances or pensions up to the statutory minimum rate, and in the treaty between France and Poland (miners, Article 8) relating to the total number of years' employment conferring the right to the State bonus.

The treaty between Belgium and the Netherlands (Article 3, No. 1) provides that, in fixing the minimum period of membership or the number of contributions required to confer the right to the statutory benefits, the total length of insurable employment or the total number of contributions paid in each country shall be taken into consideration. Section 33 of the Netherlands Act concerning invalidity and old-age insurance (there is no equivalent provision in Belgian law) allows exemption for workers who have reached the age of thirty-five years without already having been liable to compulsory insurance. Applying the principle of totalisation by analogy, Article 5 of the treaty therefore stipulates that for insured persons who entered insurance under the Belgian compulsory insurance scheme before the age of thirty-five years, the age of thirty-five years specified in section 33 of the Netherlands Act shall be replaced by that of sixty-five years. From this rule the treaty draws the logical conclusions in regard to the calculation of the pension payable in the Netherlands, which will be discussed in a later part of this report.

Insurance Periods to be Totalised

Reference will here be made only to those periods completed under insurance schemes which are not limited to a single occupation.

Contribution Periods

Except as otherwise provided, all periods on account of which contributions have been paid are eligible for totalisation. Apart from contribution periods proper, account is also taken, as for the maintenance of rights in course of acquisition, of periods made up by a lump-sum payment, periods of unemployment covered by payments out of a guarantee fund or unemployment insurance fund, and all other periods for which the insurance institution receives payment against the rights which they confer.

Periods Assimilated to Contribution Periods

In addition to actual contribution periods, a number of social insurance laws, in reckoning the qualifying period, take account within certain specified limits of other periods, in respect of which no payment was made, such as periods of temporary incapacity for work due to sickness or childbirth, periods of involuntary unemployment, whether they give rise to benefits or not. Here again, assimilation may be total or partial. In the latter case these periods are taken into account only as to a certain proportion of their length. The extent of their inclusion may also be limited absolutely (e.g. to twenty-six or fifty-two weeks in all) or in relation to a given unit of time (e.g. thirteen weeks in one year).

It is obvious that, as regards the calculation of the qualifying period, these assimilated periods can be taken into account only within the limits and subject to the restrictions prescribed by the national laws of the contracting countries. The situation is quite clear on this point and is expressly stated in certain treaties (e.g. Austria-Czechoslovakia, Article 19, No. 1).

There remains, however, the question whether every insurance institution, when totalising for the purpose of reckoning the qualifying period, is to consider only the assimilated periods accepted by its own legislation, or also those recognised by the law of the other contracting country only.

Some of the treaties faced with this problem settle it by providing that each institution must include with the total contribution periods the assimilated periods recognised by its own law. This solution is adopted by the treaties between Germany and Austria (Article 15, No. 2), Germany and France (first supplementary agreement, Article 14, and Article 15, No. 2), and Germany and Czechoslovakia (Article 16, No. 1).

Other treaties provide for the inclusion of assimilated periods to the extent allowed under the national legislation of the country in which they were spent, e.g. Austria-Czechoslovakia (Article 19, No. 1), Austria-Yugoslavia (Article 18, No. 2).

The treaties between Spain and France (Article 8, No. 1) and France and Italy (Article 8, No. 1) provide that periods placed on the same footing as contribution periods by the insurance schemes covered by the treaty are to be included in calculating the length of insurance or of employment and the number of contributions for the purpose of the award of benefit. On the other hand, the agreements on miners' pensions between Belgium and Poland

(Article 13) and France and Poland (Article 20) specify the periods which may be assimilated to contribution periods and periods of employment in mining work, e.g. for Belgium, periods of war service, periods during which sickness or accident benefit is drawn, up to a maximum of six months; for France, periods of war service or military service, and the birth of a child, reckoned as one insurance year; and for Poland, periods of war service or military service, periods of incapacity for work due to sickness, up to a maximum of six months.

Concurrent Periods

Periods during which the migrant is insured simultaneously in both contracting countries are taken into account once only under the system of addition.

This rule appears in nearly all treaties. It is inspired by the consideration that the totalisation of insurance periods is intended to protect the migrant against loss, but not to place him in a privileged position in relation to other insured persons. A migrant who continued his insurance in the country of emigration while also liable to insurance in the country of immigration would be able to complete the qualifying period much more quickly than other insured persons. It is this fact which has given rise to the rule that concurrent periods shall not be counted more than once.

It must be emphasised that this rule applies only to the totalisation of insurance periods for the purpose of determining the qualification for benefit. It does not affect the assessment of the benefit due from each insurance institution, all actual contribution periods, even those completed simultaneously in the two countries, being taken into account for this purpose.

Disregard of Short Periods

Some treaties do not allow the inclusion of brief insurance periods falling short of a specified period of membership of one institution or of several institutions in the same country. This restriction is based on considerations of administrative convenience, and aims at relieving the insurance institution of the necessity of keeping, for a whole generation, the accounts of workers only temporarily insured with it.

The disregard of these short periods is prescribed in the treaties between Italy and Yugoslavia (Article 17, No. 1) and in the conventions concerning miners' pensions between Belgium and France

(Article 5), Belgium and Poland (Article 5) and France and Poland (Article 2).

§ 3. — Totalisation for Admission to Voluntary Insurance

Under most pension schemes opportunity is given to former members of compulsory insurance schemes who are not drawing a pension to continue their insurance voluntarily, by paying both the employer's and worker's contribution. Admission to voluntary continued insurance is usually made conditional on the applicant's having paid a minimum number of contributions under compulsory insurance, a provision intended to prevent the entry into voluntary insurance of persons who neither were nor are wage earners by profession, and who might take advantage of their temporary employment in an insurable occupation to claim benefits which the law intended to reserve exclusively for employed persons.

A precautionary measure of this kind would, however, run counter to the aims of social insurance if it closed the doors of voluntary insurance against migrants with a long insurance career in the country of emigration. Hence a number of treaties providing for the maintenance of rights in course of acquisition stipulate that insurance periods spent in the contracting countries may also be added together to establish the right to enter voluntary insurance. This provision is of twofold importance for the workers concerned. The facilities thus granted for admission to voluntary insurance enable them both to retain the credit for their contributions in the country of emigration and to acquire fresh rights in that to which they have migrated.

The totalisation of insurance periods for admission to voluntary insurance is allowed within the limits laid down for the purpose of reckoning the qualifying period in the treaties between Germany and Austria (Article 15, No. 2), Germany and France (Article 9, No. 1), Germany and Poland (Article 21), Germany and Yugoslavia (Articles 16 and 22), Austria and Czechoslovakia (Article 19, No. 1), Austria and Yugoslavia (Article 18, No. 2), Spain and France (Article 8, No. 1), and France and Italy (Article 8, No. 1). Mention may also be made of the treaty between Italy and Yugoslavia (Article 17), which, after providing for the addition of contribution periods spent in either country, lays down that periods of voluntary insurance in one country shall be considered as such in the other country also.

The treaty between Belgium and the Netherlands (Article 3, No. 2), makes provision for the maintenance of rights, not only between compulsory schemes, but also in respect of insured persons who transfer from voluntary insurance in one country to compulsory or voluntary insurance in the other, i.e. voluntarily insured persons under Belgian legislation who are or have been either compulsorily or voluntarily insured in the Netherlands; compulsorily insured persons under the Netherlands Act who are or have been voluntarily insured under Belgian legislation; compulsorily insured persons under Belgian legislation who are or have been voluntarily insured under the Netherlands Act.

The special treaties dealing with miners' pension schemes contain provisions somewhat similar to those under consideration here, but relating to the general conditions of admission to miners' pension funds. The conditions of admission, in particular those relating to age, are declared inapplicable to migrants formerly insured in the other contracting country with a miners' pension fund (Germany and France (second supplementary agreement, Article 14), Belgium and Poland (Article 16, No. 2*a*), France and Poland (Article 21, No. 2*b*)).

SECTION III

DETERMINATION OF PENSION LIABILITY OF EACH INSURANCE INSTITUTION

Every insurance institution which has received contributions in respect of a migrant worker determines in the light of its own legislation alone whether, after taking into account all insurance periods, the claimant fulfils the conditions of award prescribed by its national law. If this is so, the institution must then assess the benefits for which it is liable.

Invalidity, old-age and widows' and orphans' pensions are the principal benefits provided by long-term insurance. It is essentially because of the conditions prescribed for their award that the organisation of measures for the maintenance of rights in course of acquisition is necessary. In establishing the right to a pension, each institution takes into account all the insurance periods completed by the migrant. But if it were also to do so in assessing the amount of the pension for which it is responsible, the liability incurred would be out of all proportion to the contributions paid to it in respect of the migrant. All that can fairly be demanded of it is a benefit proportionate to the payments it has actually received.

The first subsection deals with the provisions governing the assessment of migrants' pensions.

In most countries the pensions based on the contributions received from the insured persons and their employers are supplemented by certain other benefits, i.e. subsidies, supplements or allowances payable out of public funds. A number of treaties cover these benefits also, each contracting country assuming liability for a fraction corresponding to the period spent in it. This financial participation of the public authorities is discussed in the second subsection.

In addition to life pensions and temporary allowances, most insurance schemes also provide for certain other benefits, i.e. lump-sum benefits and benefits in kind. These are sometimes included in the arrangements for the maintenance of rights and sometimes not. In the former case, the migrant's right to such benefits is determined on the basis of his whole insurance career, liability for them being either assumed by a single institution or distributed between all the institutions concerned. This question is discussed in the third subsection.

The fourth subsection deals with the protective clause. As each institution is only required to provide a pension fixed in proportion to the payments it has received, the sum of the fractions awarded by the institutions of both countries may in certain cases be less than the pension payable under a single legislation if no treaty were in force. The machinery for the maintenance of rights would then operate to the migrant's disadvantage. In order to prevent such situations from arising, the treaties guarantee the migrant drawing benefit in both countries a total pension at least equal to that which he would have obtained in the absence of a treaty in virtue of the insurance periods spent as a member of one and the same institution.

The fifth subsection analyses the provisions relating to the suspension and reduction of benefits contained in certain treaties. If the legislation of one country provides for the suspension or reduction of benefits which coincide with the payment of other insurance benefits, this restriction may sometimes apply even in respect of benefits paid by an insurance institution of the other contracting country. This is in fact provided under some treaties.

The final subsection deals with arrangements for paying benefit. The conditions governing the payment by insurance institutions of the benefit due to migrants are laid down by the treaties. As delay in making such payments may involve hardship for the claimants, a number of treaties provide that provisional benefit may or must be granted.

§ 1. — Invalidity, Old-Age and Widows' and Orphans' Pensions

Determination of Right to Pension

The negotiations leading to the conclusion of the earlier treaties for the maintenance of rights appear to have been guided by the principle that the treaty provisions should apply only to those migrants who, taking into account their total periods in insurance, fulfilled the conditions qualifying them for a pension in both countries. In the event of differences between the two laws—for instance, in respect of the definition of invalidity or the age of award of old-age pensions—the criterion of the stricter legislation was to be applied, and not until the conditions prescribed by the latter were fulfilled was either institution required to recognise the migrant's rights.

This principle, which might have resulted in depriving the migrant of all his rights, even in the country in which he satisfied the required conditions of award, has since been abandoned, and the treaties now in force or awaiting ratification confirm the right of the respective insurance schemes to determine their own conditions of award. While adding together all insurance periods, the insurance institutions of each country decide in conformity with their own law alone whether the claimant otherwise fulfils all the conditions for the award of the pension. In so doing, each institution acts independently of the other institutions concerned, referring only to its own legislation. Thus, the migrant may be awarded an old-age pension at the age of sixty years in one country, whereas in the other he has to wait until his sixty-fifth year; or in one country, the orphan of a migrant may be entitled up to the age of eighteen years to a pension which ceased at the age of sixteen years in the other.

Most of the treaties expressly stipulate that each insurance institution shall be governed by its own law, except as regards the totalisation of insurance periods, e.g. the treaties between Germany and Austria (Article 15, No. 4), Germany and Poland (Article 19, No. 4), Germany and Czechoslovakia (Article 16, No. 2), Austria and Czechoslovakia (Article 19, No. 3), and Austria and Yugoslavia (Article 18, No. 4). Other treaties which also adopt this standpoint even specify that in the case of insured persons who, in spite of the inclusion of all insurance periods, do not otherwise fulfil at the same time all the conditions prescribed by the laws governing the respective

insurance institutions, the pension shall be awarded by each institution as soon as the required conditions are fulfilled. This is provided in the following treaties: Germany-France (first supplementary agreement, Article 17; second supplementary agreement, Article 4, No. 7); Spain-France (Article 10), France-Italy (Article 10), France-Poland (miners, Articles 8 and 19), Italy-Yugoslavia (Article 14).

As each institution applies its own law in verifying whether the requisite conditions of award are present, the effective working of the treaties depends very largely on the degree of similarity between the different laws in this respect. If two countries have adopted the same criterion—for instance, the same definition of invalidity—it is desirable that they should also agree in practice, so that when a migrant is awarded a pension in one country he shall also receive one in the other. This guarantee of simultaneous award is given in the first supplementary agreement between France and Germany (Article 15, No. 2), which provides that the recognition of invalidity by the insurance institution to which the insured person last belonged is valid for the insurance institutions of the other scheme, provided that the definition of invalidity is the same in all the schemes concerned. The second supplementary agreement under this treaty contains a similar provision in respect of the recognition of incapacity for employment in mining work under the miners' pension schemes (Article 4, No. 2).

Exceptions to the rule that each insurance institution must apply the criterion of its own law are, however, allowed under certain circumstances in favour of migrants who would otherwise be awarded a pension in one country only. Thus the treaty applying to miners' pensions between Belgium and Poland provides under Article 5B that the Polish miners' funds shall award an invalidity pension to an insured person entitled under the treaty to invalidity benefits in conformity with the Belgian legislation, thereby recognising that he also fulfils the conditions required by Polish law. The object of this exception is to secure for a miner whose disablement is recognised in one of the contracting countries a total pension sufficient to keep him from want.

Insurance Periods Taken into Account for the Assessment of Pensions

When, taking into account all insurance periods, the conditions of award prescribed by its national law are fulfilled, each insurance

institution assesses the amount due in conformity with its own legislation. In so doing it takes into account only the contribution periods completed under its own scheme, that is to say, both actual contribution periods and periods placed on the same footing by its national legislation in respect of the assessment of pensions.

Periods which count as actual contribution periods are those covered by payments made according as they fell due and also certain other periods on account of which the institution received specific payments, and to the extent of such payments, i.e. periods made up by the payment of a lump sum upon entering insurance, periods granted as a bonus upon the transfer of the capital representing rights acquired with another institution, periods of unemployment on account of which payments have been made by an unemployment insurance or guarantee fund, periods of military service covered by payments from the State.

Apart from contribution periods, however, a number of laws also take into account for the assessment of pensions certain other periods for which no payments were made, i.e. periods of military service not covered by State payments, periods spent in non-insurable employment owing to the fact that the occupation concerned was not liable to insurance at that time. Such assimilated periods are always defined restrictively in the treaty, and their assimilation is subject to limitations. They are counted as equal to only a fraction of their actual length, for instance, a third or a quarter, and their addition to actual contribution periods is often only allowed up to a specified maximum, e.g. twelve or twenty-four months. The restrictions and limitations to which these assimilated periods are subject under national law also hold good for the assessment of migrants' pensions.

It may sometimes be to the interest of a migrant liable to insurance in the country of immigration to continue his insurance voluntarily in his former country of residence. He will then have to his credit, for the same period, both compulsory contributions in one country and voluntary contributions in the other. It has already been seen that for the purpose of the qualifying period insurance periods spent concurrently in both countries are counted once only, since otherwise migrants would be able to qualify for benefits more rapidly than other workers. There is, however, no reason to extend this rule to the assessment of pensions. A migrant who has paid contributions in both countries, even in respect of one and the same period, is fully entitled to claim the credit for all the contributions standing to his account. In prescribing that each

institution shall assess its own pension liability in proportion to the insurance periods spent under its regulations, the treaties in no way intend to exclude contribution periods spent concurrently in both contracting countries.

Pensions and Pension Components Varying with Time Spent in Insurance

Mention has already been made of the rule by which each insurance institution which has received contributions in respect of a migrant assesses the amount of its pension liability according to the time spent in insurance under its own law.

So far as concerns insurance schemes under which the pension corresponds to the accumulated value of the paid-up contributions standing to the insured person's account, this rule is in itself sufficient to ensure the fair distribution of pension liability between the respective institutions. As the pension is based on the number and amount of the paid-up contributions and the same co-efficient of capitalisation is applied to each contribution unit, the totalisation of insurance periods for the determination of the right to a pension in no way influences the benefit guaranteed to the migrant. Hence, no special provisions are found in the treaties relating to the pensions or pension components formed by accumulation in the individual accounts of the insured persons.

The treaties applicable to insurance schemes under which all the components of the pension are based on the accumulated value of the contributions paid in respect of the migrant may thus confine their provisions on this point to the rule referred to above. The treaty between Belgium and the Netherlands, for instance, lays down (Article 4) a single provision with regard to the Belgian old-age and widows' and orphans' insurance schemes for workers and salaried employees, to the effect that the rate of the supplements prescribed under Belgian law shall be fixed in proportion to the number of payments made in Belgium. No express provision concerning the award of the Belgian pension formed by accumulation in individual accounts was necessary, since this is governed by national legislation, and it was thus sufficient to stipulate that the Belgian supplement (which increases the pensions formed by individual accumulation by 50 per cent.) should be calculated on the basis of length of membership of the Belgian scheme.

The rule providing that each insurance institution shall assess the

pension in proportion to the insurance periods completed under its own legislation is laid down by all the treaties applying to schemes under which some of the components of the pension depend upon the accumulated value of the paid-up contributions. The same rule also applies to insurance schemes under which the pension or some of its components are fixed in proportion to the number and amount of the paid-up contributions, where the same co-efficient of capitalisation is applied to each contribution unit however long the interval between the payment of the contribution and the award of the pension. The insurance schemes constructed on this basis keep their special characteristics in the arrangements for the maintenance of rights, and the contributions retain the value ascribed to them under national legislation.

The pensions or pension components varying with the time spent in insurance and based on the number and amount of the payments standing to the migrant's account, and in certain cases on the date of such payments, must be paid in full by the insurance institution which received the contributions. This follows from the general principles of the treaties and in particular by the following specific provisions: Germany-Austria (Article 15, No. 4), Germany-France (first supplementary agreement, Article 15, No. 3), Germany-Poland (Article 19, No. 4), Germany-Czechoslovakia (Article 16, No. 2), Germany-Yugoslavia (Article 15, No. 3), Austria-Czechoslovakia (Article 19, No. 3), Austria-Yugoslavia (Article 18, No. 4), Belgium-France (miners, Article 3, Nos. 1 and 4), etc.

Reduction of Pensions and Pension Components Determined Independently of Time Spent in Insurance

Every insurance scheme which aims at covering the risks of invalidity and death must provide, if the event insured against happens after completion of the qualifying period, a pension which (save in respect of the qualifying period) is determined independently of the duration of insurance (a fixed sum, or percentage of the insured person's earnings), or else a pension varying with the duration of insurance but comprising, if not a guaranteed minimum, at least a component determined independently of the duration of insurance. In any case, both in invalidity and survivors' insurance, either the whole pension or one of its components is fixed without regard to the time spent in insurance, and even in old-age insurance a fixed pension or portion of the pension is guaranteed wherever the right to a pension is subject to the

condition of a qualifying period. When no qualifying period is required, a minimum pension may be guaranteed to insured persons who have to their credit contributions corresponding to the average length of working life. The award of fixed pensions or pension components is one of the characteristic features of social insurance, and their share in the constitution of benefits is the more important as the factor of risk outweighs the factor of saving.

If every insurance institution whose law provides for the payment of fixed pensions or pension components were liable for the full amount of such payments, the financial burden involved would be greater than the contribution made by the migrants, and the other members of the scheme would be placed at a disadvantage. In order to settle this point in a manner both fair to the migrants and acceptable to the insured population as a whole, the fixed pensions and pension components must, as it were, be transformed into benefits varying with the time spent in insurance. The right to these fixed benefits is therefore deemed to be acquired on the basis of all the insurance periods completed by the migrant in both countries, but each institution is required to pay only such fraction of them as corresponds to the ratio of the insurance periods spent under its law to the total of the insurance periods taken into account in the calculation of benefits. As already stated, the reduction of the fixed pensions and pension components payable by each insurance institution to an amount proportionate to the period with which it is concerned is a corollary of the totalisation of insurance periods for the determination of the right to a pension.

This rule is laid down by all the treaties applicable to insurance schemes at least one of which provides for pension components independent of the duration of insurance. It is nearly always framed in terms which are substantially the same. The components subject to reduction are usually specified restrictively, but there are also treaties which, after giving an illustrative list of the chief of these components, declare the reduction applicable to all other components the amount of which is fixed without regard to the duration of insurance. Components with the same social purpose, such as supplementary allowances for children, may, according as they are fixed or variable, be paid in full in one country and be subject to reduction in the other.

The method employed by the treaties to determine the pension components subject to reduction is indicated below, but the special provisions relating to miners' pension schemes are reserved for later consideration.

The pension components subject to reduction are defined by an exhaustive list in the treaties concluded by Germany with Austria (Article 15, No. 4), France (first supplementary agreement, Article 15, No. 3, and Article 21, No. 1), Poland (Article 19, Nos. 4 and 6, and Article 23, No. 1), Czechoslovakia (Article 16, No. 2, and Article 17), and Yugoslavia (Article 15, No. 3).

In order to make clear the respective roles of fixed and variable components, the composition of the annual invalidity and old-age pensions provided in conformity with the legislation in force at the end of 1933 under the insurance schemes for workers and salaried employees to which the treaties apply is shown below, the fixed components subject to reduction being printed in italics. In the case of widows' and orphans' pensions, the minimum pension rates, being fixed components subject to reduction, are also italicised. No account is taken either of the subsidies or increments paid out of public funds nor of the supplements granted in certain countries to pensioners who require constant attendance.

Austria

SALARIED EMPLOYEES

1. *Basic sum: 35 per cent. of insured person's earnings.*
2. Increment of 1 per cent. of insured person's earnings for each contribution year.
3. *Supplement for each dependent child: 6 per cent. of insured person's earnings; minimum: 90 schillings for each child;* maximum: 180 schillings.

The widow's pension is 50 per cent. of the pension of deceased; *for widows of fifty-five years of age or over it must be at least 30 per cent. of insured person's earnings.*

The orphan's pension is 12 per cent. of insured person's earnings (24 per cent. for a full orphan); minimum: 180 (360) schillings.

Czechoslovakia

WORKERS

1. *Basic sum: 550 Kč.*
2. Increments proportionate to the number and amount of paid-up contributions.
3. *Supplement for each dependent child: 10 per cent. of the pension.*

The widow's pension is 50 per cent., a half orphan's pension, 20 per cent., and a full orphan's pension, 40 per cent. of the *basic sum* and increments comprised in the pension of the deceased.

SALARIED EMPLOYEES

1. *Basic sum: 3,600 Kč.*
2. Increments proportionate to the number and amount of paid-up contributions.
3. *Supplement for each dependent child, equal to one-eighth of the pension.*

The pension of a widow (full orphan) is 50 per cent. of the *basic sum* and increments comprised in the pension of the deceased. *Guaranteed minimum: 3,000 Kč.*

The orphan's pension is 25 per cent. of the *basic sum* and increments comprised in the pension of the deceased; *guaranteed minimum: 1,500 Kč.*

The pension payable to one ascendant is 12.5 per cent. *(minimum: 750 Kč.)*, and that payable to two ascendants, 25 per cent. *(minimum: 1,500 Kč.)* of the *basic sum* and increments comprised in the pension of the deceased.

France

Workers in Departments of Upper and Lower Rhine and Moselle

1. *Basic sum corresponding to 500 contribution weeks.* (If less than 500 contribution weeks are credited, the missing weeks are included in the class in which the majority of contributions were paid.)
2. Increments proportionate to the number and amount of paid-up contributions.
3. *Supplement for each dependent child: 10 per cent. of pension.*

The widow's pension is two-thirds and the orphan's pension 20 per cent. of the *basic sum* and increments comprised in the pension of deceased.

Salaried Employees in Departments of Upper and Lower Rhine and Moselle

1. *Basic sum: 720 francs.*
2. Variable pension amounting to one-quarter of the first 120 contributions, one-sixth of the next 120 contributions and one-eighth of all other contributions.

The widow's pension consists of a *basic sum of 360 francs*, plus 40 per cent. of the variable pension to which the deceased was or would have been entitled in the event of invalidity.

The orphan's pension consists of a *basic sum of 120 francs* plus 10 per cent. (16.6 per cent. for a full orphan) of the variable pension of the deceased.

Germany

Workers

1. *Basic sum: 84 RM.*[1]
2. Increments proportionate to the number and amount of paid-up contributions.
3. *Supplement for each dependent child: 90 RM.*

Salaried Employees

1. *Basic sum: 396 RM.*[2]
2. Increments proportionate to the number and amount of paid-up contributions.
3. *Supplement for each dependent child: 90 RM.*

In both schemes the widow's pension is 50 per cent., and the orphan's pension 40 per cent. of the *basic sum* and increments comprised in the pension of the deceased.

Poland

Workers

1. *Basic sum: 58, 86, 92, 108 or 144 zlotys according to wage class in the Western Provinces; 160 zlotys in Upper Silesia.*
2. Increments proportionate to the number and amount of paid-up contributions.
3. *Supplement for each dependent child: 10 per cent. of pension.*

[1] Abolished as regards pensions awarded as from 1 January 1934, the increments being thenceforth subject to a minimum of 72 RM. a year.

[2] Reduced to 360 RM. as regards pensions awarded as from 1 January 1934.

The widow's (orphan's) pension is in the Western Provinces 30 per cent. (15 per cent.) and in Upper Silesia 40 per cent. (20 per cent.) of the *basic sum* and increments comprised in the pension of the deceased.

INTELLECTUAL WORKERS

1. *Basic sum: 20 per cent. of insured person's earnings*, i.e. half the statutory basic sum, which is 40 per cent. of such earnings.
2. Increments of $^1/_6$ per cent. of insured person's earnings for each contribution month exceeding 120 and not exceeding 480. The treaty also provides for an increment of 2 per cent. of wages for each of the first ten contribution years.
3. *Supplement for each dependent child: 10 per cent. of the pension.*

The widow's pension is equal to 60 per cent., a half orphan's pension to 20 per cent., and a full orphan's pension to 40 per cent. of the pension of the deceased.

Yugoslavia

SALARIED EMPLOYEES

1. *Basic sum: 1,800 dinars.*
2. Increments equal to: (*a*) 30 dinars for each 360 dinars in excess of 21,600 dinars paid during the last ten years; (*b*) 10 times the amount of the average monthly contribution; (*c*) one-sixth of total amount of paid-up contributions.

Minimum invalidity pension: 3,000 dinars.

The old-age pension is equal to the invalidity pension with an increase of 10 per cent.

The widow's pension is 50 per cent. of the *basic sum* and increments comprised in the pension of the deceased; *minimum : 1,800 dinars.*

The orphan's pension is 25 per cent. (50 per cent. for a full orphan) of the *basic sum* and increments comprised in the pension of the deceased. For two, three, four and five orphans the pension is 35, 40 or 45 per cent. (75, 85, 90 or 95 per cent.) of the pension of the deceased. *Minimum for first full orphan: 1,500 dinars.*

The treaties between Austria and Czechoslovakia and Austria and Yugoslavia lay down, in the clauses relating to salaried employees' insurance schemes, that the reduction shall apply to the basic sum, the statutory minimum for survivors' pensions, and to all other pension components the amount of which is fixed without regard to the time spent in insurance.

Other treaties frame the rule of reduction in similar terms: those between Germany and France (Article 9, No. 3), Spain and France (Article 8, No. 3), and France and Italy (Article 8, No. 3) by providing that the benefits incumbent upon the insurance institutions of each country shall in theory be assessed in proportion to the insured person's length of membership of each scheme, and that between Italy and Yugoslavia (Article 13) by prescribing that each insurance institution shall be liable only for such fraction of the pension assessed on the basis of totalised insurance periods as is proportionate to the period spent under its own scheme.

Adjustment of Provisions of National Law concerning Composition of Benefits

As a rule the treaties accept the composition of benefits as laid down by the national law of the contracting countries. The rule of reduction applies to the fixed components prescribed by national law irrespective of their relation to the variable components. Nevertheless, certain benefit schemes are modified by their contact with others, the chief of these adjustments being described below.

When there is too great a disparity between the fixed components of pensions in the two contracting countries, it may be to the interest of the country in which they are higher that these components should be brought to a more equal level in respect of migrants. To take an example, the basic sum of the invalidity and old-age pension under the salaried employees' scheme in Germany is 396 RM.[1] and in Poland 40 per cent. of the insured person's earnings. As the basic sum of the Polish pension is the higher, Article 23 of the treaty between Germany and Poland provides that only half this sum shall be reckoned as a fixed component, the migrant being compensated by an increment of 2 per cent. of his earnings for each of the first ten contribution years completed in Poland, whereas under national law this increment is payable only for the months between the 120th and the 480th.

Another form of adjustment adopted in the interests of a fairer distribution of pension liability, in cases when the pension in one country is composed partly of fixed and partly of variable components whereas in the other all the components are variable, consists in considering the latter as fixed components to the extent to which they are guaranteed to every insured person who has completed the qualifying period. Thus the treaty between Austria and Czechoslovakia (Article 19, No. 3) lays down that, if the rules of any insurance institution (in this case certain substitute funds in Czechoslovakia) do not provide for the granting of a basic sum, the amount of the invalidity pension payable as soon as the qualifying period has been completed shall be treated as the basic sum for the purposes of the treaty. The treaty between Austria and Yugoslavia (Article 26) lays down a similar provision for the special pension insurance scheme for employees of the River Transport Company of Yugoslavia, which does not provide for fixed pension components.

[1] Reduced to 360 RM. as regards pensions awarded as from 1 January 1934.

One more special adjustment may be mentioned which is provided for by the treaty between Belgium and the Netherlands (Article 5). It has already been noted that the maximum age for entry into insurance, fixed at thirty-five years by the Netherlands Act, does not apply in respect of insured persons who entered compulsory insurance under Belgian legislation before that age. The same group of persons are also exempted under Article 5 of the treaty from the clause of the Netherlands Act making the right to a pension of persons who were over thirty-five years of age when their first pension card became valid dependent upon the completion of a long contribution period (1,248 contribution weeks), the compulsory insurance of migrants being deemed for the purpose of assessing the pension to have commenced at the age of thirty-five years.

Non-Application of Reduction in respect of Short Periods of Insurance with Another Institution

Under most treaties insurance institutions with which the migrant was insured for only a short period in all are freed from all pension liability, the object of this measure being to eliminate the disproportionate trouble entailed by the payment of very small pensions. But to prevent any consequent injury to the migrant's rights, no insurance institution is allowed to make a reduction in its pension on account of such short periods completed with other institutions.

This rule, which both relieves one institution of its liability and prevents any reduction in the fixed pension components payable by the other, is found in a number of treaties, the minimum period being fixed at 26 weeks for workers' insurance schemes under the treaties between Germany and France (first supplementary agreement, Article 15, No. 3), Germany and Czechoslovakia (Article 16, No. 2), Germany and Poland (Article 19, No. 4) and at twelve months for salaried employees' schemes under the treaties between Germany and Austria (Article 15, No. 4), Germany and Czechoslovakia (Article 17), Germany and Yugoslavia (Article 15, No. 3) Austria and Czechoslovakia (Article 19, No. 3).

In the cases described above the migrant is protected against all loss, the periods in respect of which no pension is payable by one institution being taken into account by the other.

This, however, is no longer so when the insurance institution with which less than a specified minimum period of insurance has been completed is freed from liability while the other institution nevertheless applies the corresponding reduction to its fixed pension

components. This solution is adopted by some of the treaties regulating miners' pension schemes. It is akin to another and still more drastic one which excludes short periods from totalisation both in determining the right to a pension and in assessing its amount.

Non-Application of Reduction when only One Institution is Liable

The rule of reduction applies normally when the insurance institutions of both countries are simultaneously liable for the payment of a fraction of the migrant's pension.

What is the situation, however, when only one institution is liable for a pension, the requisite conditions of award not being fulfilled in the other country ? Is this institution entitled to reduce the fixed components of the pension for which it is liable ? This is the logical solution, and is expressly confirmed by several treaties, such as that between Italy and Yugoslavia (Article 14, No. 1). As the right to a pension was acquired on the basis of the total insurance periods, the institution responsible for payment is entitled to apply the principle of reduction.

There is, however, the further possibility that a migrant may be entitled to a pension from a single insurance institution solely on the strength of its own law and without taking into account his insurance periods in the other country. The treaties which take up a definite standpoint to this matter are not unanimous. Reduction is forbidden by the treaties between Germany and France (first supplementary agreement, Article 15, No. 4) and Italy and Yugoslavia (Article 14, No. 3), whereas it is allowed in the treaties negotiated between Austria and Czechoslovakia and Austria and Yugoslavia.

Special Provisions for Miners' Pension Schemes

This title covers the principal rules governing the assessment of miners' pensions laid down either by special treaties for miners' pension schemes or in the relevant chapters of the general treaties. Generally speaking these rules are extremely complex, owing partly to the structure of miners' pension schemes and partly to the fact that in some countries miners are covered both by special schemes and by the general pension insurance schemes.

Special provisions for miners' schemes are included in the general treaties concluded by Germany with Austria, Poland, Czechoslovakia and Yugoslavia, and also in those between Austria and

Czechoslovakia and Austria and Yugoslavia. Among the treaties dealing exclusively with miners' pensions mention may be made in particular of the Franco-Belgian and Franco-Polish treaties, that between Belgium and Poland, and the second supplementary agreement between Germany and France.

Under the general treaties applicable to miners' pension schemes, the fixed components of pensions are subject to reduction *pro rata temporis*. As in the case of the general schemes, these components are either specified in an exhaustive list, as in the treaties between Germany and Austria (Article 19), Germany and Poland (Article 26) and Germany and Czechoslovakia (Articles 17 and 18) or merely referred to generally, as in those between Austria and Czechoslovakia (Article 27) and Austria and Yugoslavia (Article 27).

If fixed and uniform pensions are payable for every group of pensioners (as in Austria, where the annual invalidity and old-age pension is 600 sch., the widow's pension 300 sch. and the orphan's pension 168 sch.), the whole pension is subject to reduction. If, on the other hand, there are no fixed components, the part of the variable pension which is guaranteed to every insured person on completion of the qualifying period is treated as a fixed component.

Certain difficulties arise in the case of countries in which salaried employees in mining undertakings belong either to the salaried employees' scheme or to a special salaried employees' branch of the miners' scheme. Is a miner who belonged in the other contracting country to a miners' pension scheme entitled to claim the special advantages of the salaried employees' scheme ? This point raises the question of the equivalence of insurance schemes. Several treaties have adopted a solution which safeguards the interests both of the migrants themselves and of the insured population as a whole. The special advantages (in this case the larger basic sum payable under the salaried employees' scheme) are granted only in respect of migrants who have been insured for not less than a specified period under equivalent schemes, any others being entitled merely to the basic sum of the mine workers' branch. Thus, the basic sum of the salaried employees' branch of the German miners' scheme is granted only to migrants who have completed at least thirty-six contribution months under one or several equivalent schemes. If this condition is not satisfied, only the basic sum of the mine workers' branch is payable. A similar provision, also based on the principle of the equivalence of insurance schemes, is contained in the treaty between Austria and Yugoslavia (Article 28).

There are also other provisions intended to facilitate the fair

distribution of liability between the miners' pension schemes of the contracting countries. For instance, the treaties between Germany and Yugoslavia (Article 18, No. 4) and Austria and Yugoslavia (Article 27) provide that the basic sum of the miner's pension in Yugoslavia shall be 8 per cent. of the insured person's earnings, a supplement of 2.4 per cent. of such earnings being granted for each of the first five years of insurance, while under the treaty between Germany and Poland (Article 26, No. 9) two contribution months in the Polish salaried employees' scheme are counted as one contribution month in the salaried employees' branch of the German miners' scheme, and so on.

An insurance institution with which the migrant was insured for only a very brief period in all is freed from any liability towards him. This exemption is granted in respect of insurance periods not exceeding twenty-six weeks (Germany - Czechoslovakia, Article 18, for mine workers) or twelve months (Germany-Austria, Article 15, No. 4, and Article 19; Germany-Poland, Article 26, No. 4; Germany-Czechoslovakia, Article 17, for salaried employees in mining undertakings: Germany-Yugoslavia, Article 18, No. 3; Germany-Czechoslovakia, Article 19, No. 3, and Article 27; Austria-Yugoslavia, Article 18, No. 4, and Articles 27 and 28). Liability for these short insurance periods is accepted by the insurance institution of the other country, which is not entitled to make a proportionate reduction in the fixed pension components for which it is liable, under the treaties between Germany and Austria, Germany and Czechoslovakia, Germany and Yugoslavia, Austria and Czechoslovakia, and Austria and Yugoslavia.

Under the special treaties dealing with miners' pension schemes the assessment of pensions is governed by the same principles as in the general treaties, but owing to their extreme complexity only a few of their more characteristic features are given below.

The miners' pensions treaty of 1927 between Belgium and France, which replaced the treaty of 1921, defines the rights of Belgian or French workers employed alternately in each country. Workers whose total periods of service in the mines of both countries amount to less than thirty years are entitled to the benefits granted under the law of the respective countries to their own workers with the same length of service, i.e. to the French allowances intended to raise to a prescribed amount the old-age pension of insured persons with not less than fifteen and not more than twenty-nine years' service, and to the Belgian Government subsidy prescribed by the general legislation governing insurance against old age and death

(Article 3). Workers and the widows of workers whose total employment in both countries amounted to not less than thirty years are entitled to the supplements intended to bring the total pension up to the minimum rate fixed by the least favourable legislation, the resultant cost being borne by each miners' pension scheme in proportion to the length of the worker's service in the mines of that country (Articles 5 and 6). The minimum length of service required in each country to qualify the migrant for a pension is three years.

The treaty between Belgium and Poland also defines the rights of miners differently according as their total length of employment is under or over thirty years. A miner of Belgian or Polish nationality whose total length of service is less than thirty years, and who ceases work in Belgian mines owing to invaldity, is entitled to the invalidity pension provided under Belgian law if he fulfils the statutory conditions. Only such fraction of the supplement payable under Belgian law, however, is paid by the Belgium National Miners' Pension Fund as corresponds to the ratio between the duration of the migrant's employment in Belgium and the total duration of his employment in both countries. The same miner is entitled to the invalidity pension payable by the Polish miners' fund concerned, this pension also being reduced *pro rata temporis* (Article 5). A miner with a total of thirty years' service in both countries may be awarded the Belgian old-age pension for miners at the age of fifty-five years, provided that he was employed underground for not less than 30 years, this pension again being paid in proportion to the fraction of the total period of service in both countries formed by the period of service in Belgian mines. The Polish old-age pension, granted as soon as the conditions of award are fulfilled, is also subject to a proportionate reduction (Articles 8 and 9). The rule of the totalisation of periods of service and the reduction of fixed pension components applies similarly to the rights of the widows, over sixty years of age, of workers who had performed at least thirty years' service in mining work in both countries (Article 11). For all other pensions and allowances, however, the treaty adopts a different criterion, the cost of these benefits being borne entirely by the country in which the migrant was last employed in mining work (Articles 7, 10 and 12).

The treaty governing miners' pensions concluded between France and Poland in 1929, which applies to workers and salaried employees of French and Polish nationality, is again based on the

principle that all periods of employment in mining undertakings covered by the schemes of both countries shall be taken into account in assessing the pension rights of migrants. Thus, in order to qualify for an invalidity pension in France, a worker must have completed at least ten years' employment in both countries, including not less than three years in France, the pension being assessed by dividing the amount of the invalidity pension fixed under French law by the total number of years of employment and multiplying the quotient by the number of years of employment spent in France. The Polish pension is fixed in proportion to the number of years of employment completed in Poland (Article 11). The same rules apply in respect of old-age pensions. The French supplements are granted only if the total length of employment amounts to at least 15 years, the rate being fixed in proportion to the number of years' employment spent in France (Article 8). Similarly, widows' pensions are assessed on the basis of the whole length of the mining career of the deceased in both countries, the French supplement being payable only if the total length of employment amounted to not less than fifteen years and if the widow is at least fifty-five years of age (Article 19).

The second supplementary agreement concluded in pursuance of the treaty between Germany and France, to which the Governing Commission of the Saar Territory has also adhered, covers workers and salaried employees, irrespective of nationality, who are insured with the insurance institutions of the special miners' pension schemes in Germany, France and the Saar Territory. Each institution in respect of which the claimant satisfies the prescribed conditions for the award of an invalidity or old-age pension, taking into account the whole of his insurance career under a miners' pension scheme, begins by calculating the pension which would be due if all these insurance periods had been completed under its own law, including all pension components such as the basic sum, increments, allowances, State subsidies and other supplements. In so far as the amount of the pension depends on wages, the rate of contribution, occupational qualifications, or the insured person's wage class, the treaty defines the method of its assessment. Periods spent under another miners' pension scheme are deemed to have been spent in the wage class which would have been applicable to the migrant if throughout such periods he had received the average annual earnings of salaried employees performing the same duties or of workers who had contributed throughout the year. Each institution then bears the cost of a fraction of the pension so assessed corres-

ponding to the fraction spent under its own scheme of the total insurance periods (Article 4). The same rules apply to the award of widows' and orphans' pensions and of other similar allowances (Article 7). In order to qualify for benefit the migrant must have spent at least one year in all as a member of a miners' pension fund.

To illustrate the rules which may govern the award of miners' pensions when miners are also covered by the general invalidity, old-age and widows' and orphans' insurance scheme in one country but not in the other, reference may be made to the two principles laid down in this respect by the second supplementary agreement under the Treaty between Germany and France (Article 10). This agreement provides, first, that pensions payable under special schemes shall be assessed exclusively on the basis of the insurance periods recognised for the purposes of these schemes; and secondly, that any pensions due to miners under the general scheme shall be assessed on the basis of the periods recognised for this purpose in the countries concerned, and also, as regards a country in which miners are not covered by the general scheme, on the basis of periods recognised for the purposes of the special miners' pension scheme.

§ 2. — Subsidies, Supplements or Allowances Payable Out of Public Funds

Some of the treaty provisions dealing with subsidies, supplements and allowances payable out of public funds have already been mentioned in passing. The time has now come to return to this subject, and to give a methodical survey of the treaty arrangements governing the migrant's rights in respect of benefits provided principally or entirely out of public funds.

The financial participation of the public authorities is provided for by nearly all schemes for employed persons in general or for manual workers, and also by most miners' pension schemes.

Under some schemes the State provides or contributes to the general funds of insurance or to special funds intended to provide supplements or fractions of pensions, or allowances for all or certain groups of beneficiaries. Under others the financial participation of the public authorities takes the form of State subsidies or supplements added to the pensions which are paid out of the funds constituted by the contributions of the insured persons and their employers. Hence the financial participation of the State may assume the most varied forms, such as the payment of a fraction of the insurance contribution, a lump-sum contribution to funds,

defrayal of the cost of certain pension components or of a specified fraction of the pension, or supplements added to current pensions.

How far are migrants and their dependants entitled under the treaties to share in the benefits resulting from the financial participation of the public authorities ? The answer to this question depends very largely on the form that this participation takes in the insurance schemes of the contracting countries.

When the public authorities are responsible for the payment of part of the contributions, or when their participation is otherwise proportionate to the payments made in respect of each insured person, it is only fair that the migrant should retain his right to the benefits resulting from the participation of the public authorities, which are in fact proportionate to the effort of thrift he has made. Similarly, when this participation takes the form of the payment of supplements proportionate to the contributions paid under the insurance scheme concerned, the migrant should be entitled to enjoy these advantages like any other insured person.

A number of treaties have in fact adopted this view, and it will be enough to recall in illustration the clauses of general and mining treaties already cited concerning allowances and supplements payable by the public authorities and varying with the duration of insurance, under which each country assesses its liability for these components on the basis of the insurance payments made under its law. There is thus a close analogy between allowances or supplements payable out of public funds and variable pensions or pension components.

When the public authorities bear the cost of those benefits which are determined independently of the number and amount of the contributions standing to the insured person's credit, in the form either of a fixed subsidy added to every current pension or of a supplement intended to raise a pension based on the accumulated value of contributions up to a guaranteed minimum, this benefit will not be granted in its entirety by each country in which the migrant has been employed. The rule of reduction *pro rata temporis* will apply in the same way as to fixed pensions or pension components independent of the length of insurance.

Even the earlier treaties of 1919 and 1920 between France and Italy and France and Poland provide that the right to the State supplement shall be determined on the basis of the total duration of insurance in both countries. Each country first calculates the amount of the supplement which would have been due if the migrant had spent his whole insurance career under its own law,

and then reduces the sum obtained, having regard to the time actually so spent.

Among more recent treaties providing for this method of reducing the subsidy which is added to invalidity, old-age and widows' and orphans' pensions granted under workers' insurance schemes are those between Germany and France (first supplementary agreement, Article 15, No. 3) and Germany and Poland (Article 19, No. 4). Here the subsidy is reduced in the same proportion as the basic sum of the pension, that is, to a fraction corresponding to the ratio between the insurance periods spent under the scheme of the institution responsible for payment and the total of the insurance periods taken into account for the calculation of benefits. In other words, the State subsidy is treated in the same way as the basic pension, and is granted in the same proportion, unless the contracting countries reserve the right in certain circumstances to withhold the fraction of the subsidy for which they are liable.

Some treaties, however, have adopted a different solution, providing that the subsidy due from the public authorities shall be payable by one country only, i.e. the pensioner's country of residence (Germany-Austria, Article 17, No. 2; Germany-Czechoslovakia, Article 20). This method, which is easy to apply, is based on the consideration that the subsidy added to current pensions is fixed with due regard to living conditions in the country concerned and is thus fair to migrants living in it.

Finally, there are treaties, such as that between Italy and Yugoslavia (Article 23) which reserve the decision as to migrants' rights in respect of subsidies payable by the public authorities for later agreement, the award of these subsidies being governed meanwhile by the conditions laid down by the law of the country responsible.

§ 3. — Lump-Sum Benefits and Benefits in Kind

In addition to life pensions and temporary allowances, and sometimes in place of them, compulsory pension insurance schemes also provide for the award of lump-sums in certain cases: redemption or commutation of the pensions of insured persons or their dependants who cease to be insurable before or after completing the qualifying period; dowries to insured women on marriage; payment of part of burial expenses; or lump-sum payments to widows or orphans who are not entitled to a pension. Further, apart from cash benefits, the insurance schemes of some countries also provide for benefits in kind, in particular, medical treatment and atten-

dance granted, with a view to preventing, postponing, alleviating or curing invalidity, to persons in receipt of or likely to claim invalidity pensions.

In this subsection therefore it is examined whether lump-sum benefits and benefits in kind are included in the arrangements for the maintenance of rights, and if so how the resultant liability is distributed.

Lump-Sum Payments

The inclusion of lump-sum payments in the arrangements for the maintenance of rights depends on their importance in the respective insurance schemes. Generally speaking, lump-sum payments on death in place of pensions, intended to help the family of the deceased to adjust themselves to the circumstances created by the death of the breadwinner, are included in these arrangements, the rights of survivors to such benefits being fixed in proportion to the total length of the insurance career of the deceased in both countries. The migrant's rights to other lump-sum payments, on the other hand, are usually governed by the regulations of the insurance scheme of each country.

The totalisation of insurance periods for the purpose of the award of benefit applies to all other cash benefits in the same way as to pensions, under the treaties between Germany and France (Article 9), Germany and Yugoslavia (Article 15, No. 3), Belgium and the Netherlands (Article 3), Spain and France (Article 8), France and Italy (Article 8), Italy and Yugoslavia (Article 25, No. 1), and also under the treaties concerning miners' pensions between Belgium and France, Belgium and Poland, and France and Poland.

Other treaties give an exhaustive list of the cash benefits other than pensions to which migrants are entitled: refund of part of the contributions paid; award of a lump sum, proportional to the annual pension, to survivors who have no claim to the pension; dowries to insured women on marriage (Germany-Austria, Article 16, No. 3; Austria-Yugoslavia, Article 19); lump-sum payments to non-pensionable dependants (Austria-Czechoslovakia, Article 20). These treaties cover only benefits which are of the same character and have the same social purpose in both countries.

Finally, there are treaties which exclude lump-sum payments from the arrangements for the maintenance of rights, either explicitly like that between Germany and Czechoslovakia (Article 15, No. 5), or implicitly, by adjusting their provisions exclusively

to the payment of pensions. In such cases, the award of lump-sum benefits is governed entirely by the law of the responsible insurance institution, taking into account only the insurance periods spent with it.

The lump-sum benefits provided for by the treaties may either be paid jointly by both institutions, or entirely by the institution with which the migrant was last insured.

Under the Franco-Italian and Franco-Polish treaties of 1919 and 1920, lump-sum payments in case of death are payable jointly by the institutions of both countries, each institution reducing the total sum assessed on the basis of the whole duration of insurance to a fraction corresponding to the insurance periods spent with it.

The treaty between Germany and Austria (Article 16, No. 3) applies the same rules as in respect of pensions. The lump sums varying with the number and amount of contributions are paid in full by the insurance institutions of each country, while the fixed sums are subject to reduction. The treaty between Germany and Poland (Article 26, No. 3) provides that, when funeral benefits are fixed in proportion to the pension, they must be paid in full, but that they shall be subject to reduction when the amount is fixed independently. The same applies to the lump-sum payments provided under the treaties between Austria and Czechoslovakia (Article 20) and Austria and Yugoslavia (Article 19).

The alternative solution, placing the whole liability for lump-sum benefits on the insurance institution with which the migrant was last insured, is common to all the treaties on miners' pensions, i.e. those between Germany and France, Belgium and France, Belgium and Poland, and France and Poland.

The second supplementary agreement under the treaty between Germany and France (Article 11) provides, for instance, that on the death of an insured person or pensioner his dependants shall be entitled to the lump sum payable under the scheme to which the deceased last belonged. The amount is assessed on the basis of all the insurance periods which can be taken into account and is paid by the last institution of which he was a member. This rule applies equally to the sums payable under the various schemes on the death of the wife or child of an insured person or pensioner. It is also laid down in the treaty between Belgium and France (Article 4) in respect of the benefits payable to the widow on the death of a miner whose total employment in mining work amounted to less than 30 years, and in respect of orphans' allowances. The treaties between Belgium and Poland (Articles 7 and 17) and France and Poland (Articles 14

and 15) again determine the right to orphans' allowances and lump-sum payments on death on the basis of the total length of employment, but in conformity with the legislation governing the fund with which the miner was last insured, which is liable for the whole cost of these benefits.

Benefits in Kind

Several of the treaties providing for the maintenance of rights between pension schemes for workers and salaried employees in mining undertakings contain special clauses dealing with migrants' rights to benefits in kind in the form of medical, curative and preventive treatment. If a migrant is entitled to these benefits under one of the schemes, his rights must be determined on the basis of his whole career in miners' insurance.

It is obvious that medical treatment cannot be organised by more than one insurance institution, and the institution liable must therefore be defined in the treaty. Medical and pharmaceutical expenses may either be assigned to the same institution, or distributed among all those to which the migrant has at some time belonged.

The treaty between Germany and France (second supplementary agreement, Article 12) lays down that the award of benefits in kind shall be determined on the basis of all the insurance periods which the migrant has spent under various miners' pension schemes. Any benefits in kind to which an insured person or pensioner or his dependants may be entitled under the scheme with which he was last insured are borne entirely by that scheme.

Under the treaty between Germany and Poland (Article 26,No. 5), medical treatment is provided by the insurance institution of the country in which the claimant is normally resident and under the provisions by which the institution is governed. The insurance institution of the other country bears a fraction of the cost proportionate to the length of the contribution periods spent with it. The same method is adopted in the treaty between Germany and Yugoslavia (Article 20), according to which treatment is provided by the insurance institution of the claimant's country of residence and the cost distributed between the responsible institutions in proportion to the length of the contribution periods spent with each.

§ 4. — Protective Clause

The object of the maintenance of rights in course of acquisition is to protect the interests of migrant workers by guaranteeing them

advantages corresponding with the payments made on their behalf in each of the contracting countries. But since the insurance institution of a given country is authorised to reduce the fixed part of a migrant's pension to the extent justified by the proportion of his insured career spent in that country, it may occur in a particular case that the sum of the parts payable to the migrant by the institutions of the several countries in which he has been insured is smaller than the pension which a single institution would have paid him if no treaty had been entered into. The maintenance arrangement would then work against the interests of the migrant.

In order to make such an occurrence impossible, the treaties guarantee that each migrant who qualifies for a pension by making contributions in two countries shall receive a total pension at least equal to that which he would have received in virtue of the contributions paid in a single country according to that country's internal legislation. With this safeguard, known as the protective clause, the total figure obtained by adding the parts of the pension which are payable by the institutions of the two countries can never be smaller than the " unilateral pension " (that is the pension calculated according to internal legislation) payable by a single country. To arrive at this unilateral pension, the existence of the treaty may be ignored. If the total pension is smaller than the unilateral pension due by an institution in one country, the protective clause comes into effect, and the institution which would otherwise have profited is required to increase its part up to the level of the unilateral pension.

Example: country A's part of a given migrant's pension is 3 units; country B's part is 2; total, 5. Suppose that if the treaty were not in existence A would have been required to pay the migrant a pension of 6; under the protective clause A has to increase its part of the pension by the difference between 6 and 5, i.e. 1, and would thus have to pay 4 in all. The part payable by B would remain at 2, the total pension received by the insured person being 6.

The treaties give expression to the protective clause in the following terms: " If the total benefit to be paid, in virtue of the treaty, to an insured person by the two countries . . . is less than the amount of the benefit provided by either country in virtue of its own law with respect to the insured person's periods of contribution exclusively within its territory, such benefit shall be increased by the State or insurance institution concerned by the amount of the difference." This formula, or one very similar to it, is to be found in the treaties between Germany and Austria

(Article 16, No. 1), Germany and Poland (Article 28), Germany and Czechoslovakia (Article 21), Germany and Yugoslavia (Article 28), Austria and Czechoslovakia (Article 21), Austria and Yugoslavia (Article 20), Belgium and Poland (miners, Article 23, No. 3), Spain and France (Article 9, No. 1), France and Italy (Article 9, No. 1), France and Poland (miners, Article 29) and Italy and Yugoslavia (Article 14, No. 2).

A number of treaties stipulate that the protective clause shall apply also to the allowances or supplements payable out of public funds. Thus the Franco-Italian Treaty of 1919 (Article 7, No. 5) and the Franco-Polish Treaty of 1920 (Article 1, No. 7) lay down that, in cases in which the total of the allowances payable by the two countries is less than the allowance which would be due from one of the countries under its own legislation on the basis of the contribution periods in its territory, the part of the allowance chargeable to this country shall be increased by the difference between these two amounts.

The protective clause is also applicable, under most of the treaties, to cash benefits other than pensions (lump sums at death, to orphans, etc.), in so far as these payments are fixed or contain a fixed part and may therefore be reduced *pro rata temporis*.

As a result of the differences in respect of benefits between the schemes to which the treaties apply, it may occur that the worker is entitled to part of a pension from one country and part of a lump sum benefit from another. In order that the institution of each country may calculate the difference for which it is liable in virtue of the protective clause, it must make a comparison with the annual value of the lump sum paid by the other institution (if its own benefit takes the form of a pension), or with the capital value of the pension paid by the other institution (if its own benefit takes the form of a lump sum). This provision is contained in the Austro-Czechoslovak and Austro-Yugoslav treaties (Articles 21 and 20 respectively).

A migrant may claim the advantages of the protective clause if he has been insured under three or more institutions based on various schemes. In such a case two or even three of the institutions might be required to pay complementary benefit. It must generally be determined first of all how much complementary benefit the insured person should receive, and, secondly, how liability for this amount should be shared between the various institutions. Some treaties have solved these two questions by providing that the complement shall be equal to the highest complement which

would have been payable by any one of the institutions had the others not been liable, and that liability for this amount shall be shared between the institutions in the ratio between the sums which would have been payable by each. This solution has been adopted in the treaties between France and Germany (first supplementary agreement, Article 16, No. 1; second supplementary agreement, Article 5, No. 1), Spain and France (Article 9, No. 1) and France and Italy (Article 9, No. 1).

Example: if the total of the parts payable by the institutions of countries A, B and C is 40, while the pension corresponding to the contributions paid in B alone is 48, and that corresponding to the contributions made in C alone is 54, the complement payable to the insured person will be 14. Liability will be divided between B and C in the proportion of 8 to 14, that is to say B will pay a complement of 5.1 and C one of 8.9, besides their parts of the original pension (40) mentioned above.

In view of the working of the protective clause in favour of insured persons, a number of treaties include a clause to safeguard the interests of the institution. This, which may be called the *maximum benefit clause*, provides that a migrant who has been insured in both contracting countries shall never be in a more favourable position than a worker who has been insured during the whole of the time under the scheme which provides the higher benefit. In other words, the maximum benefit clause states that the total of the parts payable under the treaty by the institutions of the contracting countries may not exceed the amount of the pension which would have been payable by the institution whose scheme provides the higher benefits if the whole period during which the migrant was insured had been spent in insurance with that institution. If this amount is less than the sum of the parts, each of the latter must be reduced in proportion.

Example: The part payable by the institution of country A is 15; that payable by the institution of country B is 10; total 25. If the whole period of insurance had been passed in A (supposing the scheme in force there to be more favourable to the insured person than that in force in B), the institution in A would have to pay a pension of 20. The maximum benefit clause provides that in such a case the sum of the parts shall be reduced to 20, the part payable by institution A being $15 - ({}^{3}/_{5} \times 5) = 12$, and that of B, $10 - ({}^{2}/_{5} \times 5) = 8$.

The maximum benefit clause is embodied in the treaty between Belgium and France concerning miners' pensions (Article 11, No. 1),

which provides that the application of the treaty shall not have the effect of increasing the pensions to an amount higher than that which would result from the application of the most favourable legislation to workers having been employed in mines for the same total period. In the other treaties concluded by France, namely with Germany (first supplementary agreement, Article 16, No. 2; second supplementary agreement, Article 5, No. 2), Spain (Article 9, No. 2) and Italy (Article 9, No. 2), it is stipulated that the sum of the parts of a pension cannot be greater than the pension which would have been payable by the most favourable insurance institution on the basis of all the periods of contribution concerned and that, if this would be the case, each part of the pension shall be reduced in proportion.

§ 5. — Provision for Suspension and Reduction

In principle, benefits under compulsory invalidity, old-age and widows' and orphans' schemes are payable as a matter of strict legal right. If he has fulfilled the conditions on which such payment depends, the insured person is entitled to benefit, regardless of his financial position and of any other income which he may possess.

This is the principle, but in quite a number of schemes its application is limited. This is particularly the case when the same risk —disablement—is covered by both an invalidity insurance and an industrial accident insurance or compensation scheme. In accordance with the rule *ne bis in eadem*, certain schemes limit the rights of the pensioner in a number of ways, by providing either that only benefit under the accident insurance or compensation scheme shall be paid, or that the sum of the accident and invalidity pensions may not exceed the average earnings of the insured person during the year which preceded the accident, or again that the invalidity pension paid to a person already receiving accident benefit shall be reduced in amount, etc.

These various suspension and reduction clauses, which prohibit or limit the simultaneous drawing of benefit from several insurance institutions covering the same risk, are based on the idea that it is improper for social insurance to grant benefits the sum of which exceeds the loss suffered by the insured person or his dependants. This idea applies, it may be noted, even to cases in which the occurrence of two events insured against would otherwise have entitled the insured person to double benefit—as, for instance,

that of a woman drawing an invalidity pension who claims a further pension as her deceased husband's widow.

Further, certain supplements to pensions in course of payment, and in particular those granted by the public authorities, may be and in certain countries are payable only to persons whose income apart from the pension, does not exceed a certain amount, which may, for instance, coincide with the amount not taken into consideration for the purpose of assessing income tax.

The treaties governing the relations between insurance schemes which contain such reduction or suspension clauses provide for their application to migrants; benefit paid or payable by an insurance institution in one contracting country has, it is stipulated, the same limitative effect upon benefit paid or payable by an institution in the other as if both institutions were situated in the same country. Suppose, for instance, that benefit under the invalidity, old-age and widows' and orphans' insurance scheme in country A is suspended or reduced if the pensioner is in receipt of an accident pension; a pension paid to the same insured person by the accident insurance institution of country B will then have the same effect as if it were paid by the corresponding institution in country A.

A provision of this nature, respecting pensions, is contained in the Austrian-German treaty (Article 20), while in the treaties between France and Germany (first supplementary agreement, Article 28; second supplementary agreement, Article 19), Germany and Poland (Article 6a), Austria and Czechoslovakia (Article 22), and Austria and Yugoslavia (Article 21), a similar provision applies to all social insurance benefits, whether in the form of periodical payments or of lump sums.

The Franco-German treaty both extends the scope and more clearly defines the operation of the suspension and reduction provisions contained in the insurance schemes to which it applies. This treaty provides that, wherever such clauses exist—that is, wherever social insurance benefits are suspended or reduced because the recipient has income other than such benefits—no distinction shall be made between the two contracting countries in respect of the origin of such benefits. If, for instance, according to the legislation of one of the countries, the income of the beneficiary is taken into account for the calculation of benefits payable by an insurance institution of that country, income received by such beneficiary from the second country shall affect the amount of the pension or allowance payable by the institution of the first country.

But obviously, in calculating its part of a pension or allowance, this institution cannot take into account the whole of the benefit or the whole of the income which the insured person receives in or from the other country; these benefits or this income can only affect the part of the pension or allowance payable by the institution of the first country to the extent justified by the ratio of the period of contribution passed in that country to the total period completed by the insured person. The same rules are found in the treaty between Germany and Poland.

In some countries the right to a pension is restricted to insured persons who are no longer in employment insurable under the scheme or do not earn more than a specified low amount from such employment. These countries have stipulated, in the treaties between them, that employment in one contracting country shall be assimilated to employment in another in so far as, under the legislation of the first country, such employment affects the right to a pension or its amount. Provisions of this sort are contained in the treaties concluded by Austria with Czechoslovakia and Yugoslavia (Articles 26 and 25 respectively).

§ 6. — Arrangements for Paying Benefits

A migrant who has reached the pensionable age or finds himself incapable of working applies for the pension to which he considers himself entitled. He has been a member in turn of the insurance institutions of both the contracting countries; must he send his application for benefit to both the institutions, or is it enough for him to notify one only, and should this one institution be that competent for his last employment, or that of the country in which he is residing ?

Submission of Claims for Benefit

As long as a treaty does not dispense them from the obligation to do so, migrants must conform with all the regulations applicable to other insured persons, and, in particular, must submit their applications for benefit to each institution separately. But it is precisely in order to make it easier for migrants to secure recognition of their rights that a large number of treaties authorise them to apply to one of the institutions only, the date at which the application reaches this institution being deemed to be the date of submission of the claim to both institutions. The application

must be accompanied by the documents required under the legislation governing the various insurance institutions to which the migrant has belonged.

The submission of the application for benefit to one only of the institutions is expressly permitted in the treaty between Germany and France (first supplementary agreement, Article 25; second supplementary agreement, Article 15), such submission being deemed equivalent to submission to all the institutions concerned. According to the mining treaty between Belgium and Poland (Article 19), the migrant presents his claim to the institution of the country in which he last worked; if he no longer resides in this country, he may have his application forwarded to the appropriate institution by the competent institution of the country in which he is residing. According to the mining treaty between France and Poland (Article 24), the claim may be submitted either to the insurance institution of the country in which the migrant was last employed, or to that of his country of residence.

Other treaties, which do not specify the institution to which application for benefit should be submitted, nevertheless provide that the legal time limits prescribed for the submission of applications shall be deemed to have been observed, even if the person concerned has lodged such application with an insurance institution in the other contracting country. Thus, as a result of the mutual administrative assistance arranged between the insurance institutions of the contracting countries—a question which is dealt with in the Third Part of this Report—migrants have a guarantee that their claims will not be ignored because of late submission or of submission to an institution not competent to pay the benefits claimed.

Settlement of Benefit Claims

The settlement of the benefit claims of migrants or their dependants is in general regulated by the legislation governing the institution liable. The institution needs information concerning the periods of insurance which a migrant has completed under institutions in the other contracting country and the benefit to which he is entitled from them. It may obtain such information by means of administrative co-operation—that is, by relying on the help of the institutions concerned—or alternatively call on the migrant to state the facts without knowledge of which his claim cannot be satisfied. A number of treaties — for instance, those between Austria and Czechoslovakia (Article 16, No. 1) and

Austria and Yugoslavia (Article 14, No. 4)—require the migrant to inform the insurance institution of the one contracting country concerning the benefits he receives or is applying for under insurance schemes in the other.

When calculating its part of the pension or lump-sum benefit, an insurance institution may have to consider sums due to the migrant from an institution in the other contracting country and expressed in that country's currency. A number of treaties stipulate that, in cases of this sort, the conversion from the currency of the one country to that of the other shall be effected on the basis of the relation between the two currencies as quoted in the foreign exchange market of the capital of the State in the currency of which it is expressed (treaties between Germany and Poland, Article 10, and Germany and Yugoslavia, Article 10).

A special regulation is necessary to determine the amounts which should be taken into account for the calculation of the complementary benefit which may have to be paid under a protective clause; the comparison may be made on the basis of the relation of the two currencies concerned to gold (treaties between Germany and Austria, Article 16, No. 1; Germany and Czechoslovakia, Article 21; Austria and Czechoslovakia, Article 21, and Austria and Yugoslavia, Article 20), or the benefits are calculated in the currency of the country in which the migrant was last insured, the conversion then being made at the official rate of exchange of the capital of the country in the currency of which the amount is expressed (treaties between Germany and France, first supplementary agreement, Article 16, No. 3; second supplementary agreement, Article 5, No. 3; and France and Italy, Article 9, No. 3). The treaties between Germany and Poland (Article 28) and Germany and Yugoslavia (Article 38) further specify the day on which this calculation shall be considered as having been made: they provide that the operation shall be based on the relation between the two currencies as quoted in the foreign exchange market of the capital of the State to which the insurance carrier, liable for complementary benefit, belongs, the rate of exchange on the first day of the calendar quarter in which the individual pensions are calculated being employed.

Methods of Payment

The mode of payment of the benefits due to migrants or their dependants is regulated by the legislation governing the institution

liable for such payment. Several treaties state explicitly that the institution liable for the payment of the benefits prescribed by the treaty shall meet its liability in the currency of its own country (Germany-France, Article 10, No. 1; Belgium-Poland, Article 23, No. 4; Spain-France, Article 12, No. 3; France-Italy, Article 12, No. 3, etc.).

Payments outside the country in which the institution liable for payment is situated are made at the beneficiary's risk; they must be arranged as simply and as cheaply as possible (treaties between Germany and Austria, Article 25 (*a*); Germany and Czechoslovakia, Article 25 (*a*); Austria and Czechoslovakia, Article 29; Austria and Yugoslavia, Article 30, etc.).

A number of treaties exactly regulate the details of payment. As an example, the appropriate provisions of the Belgian-Polish Mining Treaty (Article 23, Nos. 5-9) may be summarised. With regard to the payment of pensions due to beneficiaries residing in the other country, the Belgian National Miners' Pension Fund and the Polish insurance institutions discharge their liabilities by means of international postal orders addressed directly to the beneficiaries, the cost of such postal orders being borne by the latter. Payment may also be made through the Polish Post Office Savings Bank or in any other manner chosen in agreement between the insurance institutions concerned. Belgian pensions are paid quarterly, and Polish pensions monthly. The French-Polish Mining Treaty contains similar provisions (Article 30, Nos. 3-5). According to the arrangement concluded on 7 September 1931 for the enforcement of the Belgian-French Mining Treaty, the pension instalments under the treaty are paid quarterly in arrear by the insurance institution of the country of residence of the pensioner. Further reference will be made later to this arrangement, which provides for administrative co-operation in respect of the payment of pensions.

Commutation of Small Pensions

The part of a pension for which the insurance institution of a given country is liable may be a very small sum. It is then in the interests of the pensioner and of the institution for such periodical payments to be commuted, and a number of treaties authorise the commutation of parts of pension liabilities not attaining a specified limit.

In the treaty between Germany and Austria (Article 16, No. 2) for instance, it is stated that a pension of less than 15 RM. or

25 sch. a month may be commuted for a lump sum equal to the pension for three years, if it is established that the insurance institution of the other country is not liable for benefit. The treaty between Germany and Czechoslovakia (Article 16, No. 3) provides that pension liabilities not exceeding 5 RM. or 40 Kč. a month may be compounded for at its capital value, while the same applies, under the treaty between Austria and Czechoslovakia to liabilities not exceeding 8 sch. or 40 Kč. The conversion may be made if the institution thinks fit without application from, or consent by, the insured person. According to the treaty between Austria and Yugoslavia (Article 14, No. 5) pensions not exceeding 5 sch. or 40 dinars a month may be commuted on application by the insured person if he is resident in the other country and is not entitled to a pension there. The first supplementary agreement under the treaty between Germany and France (Article 30, No. 2) allows the institution in accordance with the regulations governing its procedure, to commute all pensions of less than 3 RM. or 18 francs a month, and obliges it to do so on application by the beneficiary. Lastly, under the treaty between Germany and Poland (Article 22) parts of invalidity, old-age and widows' pensions not exceeding 5 RM. or 5 zloty a month (3 RM. or 3 zloty in case of orphans' pensions) may, by arrangement between the institutions of the two countries, be paid by the institution liable for the greater part of the benefit, this institution being credited for the amount by the other. Failing arrangement between the institutions, the parts of pensions which do not exceed the above minimum may be compounded for at an amount agreed on with the beneficiary.

Provisional Benefit

The payment of the benefits due to migrants or their dependants may fall into arrear despite the efficient working of the insurance institutions, and the beneficiaries may be in temporary need. To protect migrants and their dependants from such privation, a number of treaties provide that provisional benefit may or shall be allowed in the interval preceding actual payment of the benefits due as a result of arrangements for the maintenance of their rights.

When the claims of the migrant or his dependants are founded, not on the totalisation of insurance periods, but on a period spent under a single scheme, a number of treaties (Germany-Austria, Article 21; Germany-France, first supplementary agreement, Article 26, No. 1; Germany-Czechoslovakia, Article 22; Germany-

Yugoslavia, Article 29, No. 2, and Austria-Czechoslovakia, Article 22) declare such persons positively entitled to provisional benefit; while, under the same treaties, benefit may be granted if the claim is based on the totalisation of insurance periods spent in both countries. According to the Germano-Polish treaty (Article 30, No. 2) the migrant is in no case positively entitled to provisional benefit, which is granted only if the institution thinks fit.

* * *

It was stated above that certain treaties, the primary object of which is to secure maintenance of rights in course of acquisition in each country, also protect workers who move from one contracting country to the other, even though they do not insure in the latter.

In order to maintain their rights in course of acquisition in the country of emigration, such workers can only rely—in so far as the validity of the contributions paid by or for them is not automatically maintained—on the possibility provided by the legislation of the country to continue to insure on a voluntary basis and in some cases to pay continuation fees. The use of these arrangements may, however, be limited to persons who continue to reside in the country concerned—a number of schemes, for instance, permit only residents to continue to insure.

Apart from the legal disabilities on non-residents, there may also be practical disabilities—the continuation fees may have to be paid promptly at very short intervals, and if these are not observed previous payments may be invalidated. It may thus be materially impossible for workers residing abroad to conform to the legal requirements in respect of payment.

In order that non-residents may be freed at least from legal disabilities, it is highly desirable for workers who have been insured under an invalidity, old-age and widows' and orphans' scheme in one country to suffer no prejudice, either in respect of their rights in course of acquisition or of their right to continue to insure, because they have moved to the territory of the other contracting country.

Certain recent treaties have made a point of protecting the interests of such workers—those between France on the one hand and Germany, Italy and Spain on the other may be quoted as instances (Article 4, No. 2, of each treaty); they lay down the principle that the rights in course of acquisition of persons who have been insured in one of the contracting countries shall not be prejudiced by reason of transfer of residence to the other.

PART II

MAINTENANCE OF ACQUIRED RIGHTS AND RESIDENCE ABROAD

Introduction

The maintenance of the right to a pension already granted supposes a case in which the event insured against happens and the legal conditions of award (completion of qualifying period and maintenance of continuity of insurance) have been fulfilled before migration. The rights of the insured person (or, in case of death, of his survivors) and the obligations of the insurance institutions are already determined. The question is whether the right to a pension already granted holds good in case of residence outside the country of the insurance institution responsible for payment, or is restricted, suspended or suppressed by reason of such residence.

The first chapter of this Part contains a review of the arguments used to defend or attack maintenance, restriction and suspension of such rights, and an estimate of the role which may be played by considerations of nationality in this connection and of the value of a policy of reciprocity as a solution of the problem.

The second chapter contains an analysis of the provisions of national laws and the stipulations of the reciprocity treaties which have been concluded between certain States.

CHAPTER I

ELEMENTS OF THE PROBLEM

§ 1. — General Objections to Maintenance of Acquired Rights in Case of Residence Abroad

The suppression, suspension or restriction of acquired rights, which may be entailed by residence abroad, is usually based on the practical difficulty and the cost of making periodical foreign payments, on the obstacle which residence abroad places in the way of the supervision of continued entitlement to benefit, and further on the influence of these payments abroad on the balance of charges and receipts of the countries liable for them.

The first argument—that of difficulty in effecting payments abroad—is not of great force, for it seems perfectly possible for a country to make such payments, either by means of its consular service or through the insurance institutions of the country of residence of the pensioner.

The supervision of pensioners residing outside the country of the benefit-paying institution encounters more serious obstacles. There must be some means of verifying that invalidity continues and that old persons, widows and orphans entitled to pensions are still alive. In this case also the problem might be solved by the intervention of the consular authorities or preferably by the collaboration of the insurance institutions of the country in which the pensioner resides. There are such institutions in all countries, and they possess, for the supervision of their own pensions, medical and administrative services which might be utilised. Agreements between States or institutions could surmount these obstacles without either great difficulty or serious expense.

The argument that the transfer of pensions may cause a deficit in the balance of payments and receipts of countries liable for such pensions is by no means negligible. Insured persons overtaken by invalidity or old age, and widows and orphans, feel a natural tendency to return to their own countries, and it is certain that a

State which receives hundreds of thousands or even millions of immigrants, may have to send thousands if not tens of thousands of pensions out of the country every year. But this consideration, important though it is, should not outweigh a respect for acquired rights, and a solution, if it is to be just, must be based on a study of the nature of these rights.

Further, the above arguments apply to all benefits, not to certain of their constituent factors only; and if they were incontestably valid the result would be the suspension of all benefits in case of residence abroad—an extremely sweeping solution which has only been adopted in a very small number of cases.

§ 2. — Character and Severity of Restrictions of Acquired Rights which Residence Abroad May Entail

If a pensioner transfers his residence abroad, the resulting restrictions may be more or less severe: his rights may be maintained only on condition that he obtains an authorisation to live abroad; his pension may be commuted for a lump sum; it may be reduced in amount; the part of the pension paid out of the public funds may be withheld; or the whole pension may be withheld.

Maintenance of Acquired Rights Conditional on Authorisation to Reside Abroad

By making the maintenance of acquired rights conditional on an authorisation to live abroad, the institution is enabled to check the object and duration of the period spent away from the country of insurance and to have exact information concerning the pensioner's place of residence.

Such authorisation is usually granted by the institution, which nevertheless has in theory a general discretionary power to allow or disallow the maintenance of benefit rights. Under the legislation of certain countries, however, this discretionary power is limited; in some cases, for instance, the institution must give the authorisation to reside abroad, with maintenance of benefit rights, if such residence is to be short (e.g. not more than six months), or if it is based on considerations of health (cures, etc.).

On the other hand, an authorisation is rarely granted if the pensioner resides abroad permanently or for a long period purely for reasons of personal convenience.

Commutation of Pensions

The commutation of pensions permits the insurance institution to avoid all the difficulties connected with periodical payments abroad; but such a solution can hardly be adopted except in the case of events the consequences of which are permanent (incurable invalidity, old-age and death).

This procedure may take one of two forms, between which there is an enormous difference from the insured person's point of view. The capital may be equal to the present value of the pension, or it may simply be a lump sum determined according to a general rule and smaller than the real constituent capital.

In the former case, the age of the beneficiary is taken into account and he suffers no loss. In the latter, the lump sum is usually nothing but the amount of the pension for a short period (two or three years); and the younger the beneficiary is (or, in the case of an orphan, the further removed from the age of cessation of pension), the greater is the pecuniary loss which he suffers.

Nevertheless, the first method (payment of constituent capital) is seldom adopted, the second (commutation at a fixed rate), which is much less favourable to the insured person, being far commoner.

Suspension of the Benefits or Portions of Benefits Payable out of Public Funds

The residence of the insured person abroad often entails the suspension of the benefits or portions of benefits payable out of public funds. Then restrictions, sometimes very severe, continue to be the subject of controversy. The arguments usually put forward for and against them are summarised below.

The supporters of restriction state that these benefits are equivalent to bounties, and that the State is fully entitled, without committing an injustice, to refuse them whenever it thinks fit. A further argument is that State subsidies or supplements are intended to raise the level of benefits to a certain minimum, which is fixed in fact, if not in theory, roughly according to the cost of living in the benefit-paying country; if the pensioner decides of his own free will to go and live in a country where the cost of living and wage level may be quite different, the criterion used to fix the benefit rights no longer applies and suspension is indicated.

The adversaries of restriction declare that the subsidies or

supplements granted by the public authorities are rights acquired as a result of the occupational activity of the insured persons, who have contributed both to the national wealth and, by paying taxes, to the national Exchequer. It is added that these subsidies and supplements are, in almost every scheme, far from corresponding with the minimum cost of living, and that, while residence abroad may conceivably justify reconsideration of the amount of such payments in accordance with the cost of living in the new country, it cannot justify their suspension.

These two sets of arguments ignore two main factors—the object of the various subsidies and supplements paid out of public funds and the length of the pensioner's occupational career in the territory of the benefit-paying State.

The benefits or portions of benefits paid out of public funds may be classified in the following very general way:

(*a*) supplementary benefit paid to all pensioners and constituting a normal and permanent part of the benefit system;

(*b*) supplementary benefit paid (or a minimum guaranteed) as a normal practice to persons who began to insure late in life;

(*c*) supplementary benefit paid (or a minimum guaranteed) during a transitional period to insured persons who had reached a certain age when the compulsory insurance scheme came into force.

The subsidies and supplements payable out of public funds are usually fixed in amount and only vary with the period of insurance under a very small number of schemes.

As a general rule, supplementary benefits of the three types defined above ought to be payable (even after transfer of residence abroad) to beneficiaries who have passed their whole occupational career in the territory of the State liable for payment, and either have been obliged to insure there, or would have been obliged to do so if a compulsory insurance scheme had existed, during that period.

The question is more delicate in the case of a worker who has passed a large proportion of his occupational career in another country, has entered the country of the benefit-paying institution and now desires to leave it. It would be idle to claim that the State in question has the same liability towards him as towards a worker who has passed all or most of his occupational career in its territory; but even in the above case it is quite possible to

imagine a system under which the worker described receives a proportion of the supplementary benefit payable out of public funds, such proportion varying with the duration of insurance in the territory of the State concerned.

Suspension of All Acquired Rights

The suspension of every sort of benefit, including both the portion derived from contributions paid by the insured person himself or his employer and that payable out of public funds is hard to justify, particularly in so far as concerns the portion derived from the contributions of the insured person and his employer; these contributions are part of the wages of labour, and it is unjust to deprive workers of the results of an economy forced on them by law.

This provision, however, is rarely met with, and where found it is in some cases tempered by provisions which permit benefit to be paid if the residence abroad is short or based on considerations of health.

§ 3. — Nationality and Restriction of Acquired Rights

The restriction of acquired rights in case of residence abroad may apply to nationals and foreigners alike or to foreigners only.

The arguments brought forward to justify the restriction of acquired rights when the pensioner moves out of the territory of the State liable for benefit have still more force in the case of foreigners, particularly when applied to supplementary benefits paid out of public funds.

It is often proposed to introduce equality of treatment for nationals and foreigners in respect of the maintenance of acquired rights during residence abroad. But the adoption of such a formula is not a sufficient solution, for it results in inequality in practice. Foreigners who are affected by invalidity or reach the pensionable age, and the widows and children of deceased insured persons of foreign nationality, often return to their home countries where they can live with their own families and take full advantage of public relief when in need of it. On the other hand nationals of the country of insurance usually remain at home in similar circumstances, cases of emigration being rare. The equality of treatment is thus apparent rather than real, and it will not alone afford

protection to foreigners in schemes which provide for considerable restrictions in respect of foreigners and nationals alike.

As has already been stated, a just solution must take into account, for both nationals and foreigners, the length of the period of membership and the number of years of occupational activity in the country of the scheme under which they have qualified for benefit.

§ 4. — Reciprocity and Maintenance of Acquired Rights

The maintenance of acquired rights in case of residence abroad is in some cases conditional on reciprocity, provided for in legislation or more frequently in treaties. According to this system, a State only permits payment of benefits to insured persons resident in the territory of another State if the latter, in accordance with its own legislation or with a bilateral treaty between the two States, gives the same permission to its own insured persons resident in the former country. In this case residence in the territory of the second State is not considered as residence abroad.

The application of this principle of reciprocity is an undoubted step forward, but its general effectiveness depends on the number of treaties which are concluded, ratified and put into force. At present, despite the increase in their number during recent years, the network of bilateral treaties actually in force is rudimentary, particularly outside Europe, and this accounts for the efforts of the countries of emigration and the workers' organisations to bring into existence an international scheme which would lay down the principle of the maintenance of acquired rights and define the main lines of its application.

A number of recently concluded bilateral treaties have already paved the way. Certain of them combine the reciprocity and nationality standards, and abolish the residence condition for nationals of the contracting States so long as they reside in either of the countries concerned.

According to a second method, also based on reciprocity, the residence condition is abolished for all persons entitled to pensions, regardless of nationality, so long as they reside in either of the countries concerned.

Lastly, there is a still wider solution, the adoption of which has already been foreshadowed in bilateral negotiations. This would altogether abolish the residence condition for the nationals of the

contracting States, and pensions would be paid entire to nationals of the two countries even if they resided in a third country.

All these solutions are embodiments of the principle of the maintenance of acquired rights, but all limit its application in one way or another: in some cases enjoyment of acquired rights is guaranteed only to nationals of the contracting countries, in others to all pensioners whatever their nationality; in some cases enjoyment of acquired rights is conditional on residence in one of the contracting countries, in others there is no such condition. It would be a function of the proposed international regulations to combine these various solutions and to secure the unrestricted recognition of the maintenance of acquired rights under invalidity, old-age and widows' and orphans' insurance schemes.

CHAPTER II

PROVISIONS OF NATIONAL LAWS AND TREATIES RELATING TO ACQUIRED RIGHTS AND RESIDENCE ABROAD

The purpose of the provisions of national insurance schemes concerning the rights of beneficiaries who reside abroad is either to maintain those rights or to restrict or suspend them.

It is true that all schemes either explicitly or implicitly allow the payment of benefit to be continued during periods spent abroad, supposing these to be of short duration (a few weeks or a few months). In any case the insurance institution is not usually aware of such short periods of absence, and it is of no great social or financial importance whether—and if so, how—the question of acquired rights in such cases is positively regulated. Most schemes have no specific rule for short absences, or simply provide that these do not affect acquired rights; the institution must then itself decide what " short absences " are to mean.

The steps taken to govern the maintenance or restriction of acquired rights thus concern solely either permanent residence or long periods of establishment abroad, and these alone will be systematically considered in this chapter. They apply most often to nationals and foreigners alike, but though equality of treatment is the commonest rule, exceptions to it are frequent, and it is not rare to find provisions concerning residence abroad which apply either to nationals or to foreigners alone.

In any case, the restrictions laid down by legislation in case of residence abroad are nothing but general rules, to which exceptions may be made by means of bilateral treaties; and in order to maintain rights, the treaties can:

(1) exempt all persons, whatever their nationality, who have acquired rights in either of the contracting countries and reside in the other, residence in one of the two countries being the deciding factor (this type of exemption is adopted in the Franco-German Treaty, Article 4, No. 1);

(2) exempt the nationals of the contracting countries residing abroad, in whatever country, nationality (citizenship of one of the contracting States) being the deciding factor (this type of exemption is adopted in the Franco-Italian Treaty, a provision of which binds each contracting State not to apply to nationals of the other any restrictions which it may make in case of residence abroad);
(3) exempt only the nationals of one contracting country who reside in the other, nationality and residence being joint deciding factors (this is the type of exemption adopted in most of the bilateral treaties).

The provisions of national laws and of treaties which concern the maintenance of acquired rights are analysed below, schemes being grouped as follows according to the rules they contain in respect of the maintenance or restriction of rights:

(1) rights unaffected by residence abroad;
(2) maintenance of rights for nationals only;
(3) restrictions applying to all beneficiaries;
(4) restrictions applying to nationals only;
(5) restrictions applying to foreigners only.

§ 1. — Rights Unaffected by Residence Abroad

If the principle chosen is that rights are maintained, residence abroad has no effect on benefits; each beneficiary is entitled to the full amount which he received when living in the country of the benefit-paying institution or would have received if he had lived there, the sole condition being that he must notify the institution of his place of residence.

If distinctions are made between nationals and foreigners residing in the country concerned, these apply also in case of residence abroad, while if equality of treatment is laid down as a general principle, it too applies to all pensioners residing abroad.

The schemes which provide for the maintenance of all acquired rights in case of residence abroad are not in fact very numerous; they are largely schemes in which benefit is derived solely from contributions and payable regardless of nationality, or in which, the supplementary pensions paid by the State or out of joint augmentation and solidarity funds are refused to foreigners even when resident in the country itself. Rare indeed are the schemes

which provide for a State supplement to benefits and continue to pay such benefits in full even to foreigners residing abroad.

In order to show the extent to which the principle of maintaining acquired rights is actually applied, the schemes concerned may be divided into three groups according to the benefits payable under them, as follows:

First Group

Schemes in which Benefits Are Derived Solely from Contributions and Are Payable without Condition of Nationality or Residence

Argentina. — Insurance of the staffs of banks.

Chile. — Workers' insurance.

Hungary. — Miners' insurance. The competent Minister is authorised to suspend payment of pensions, as a reprisal, to national and foreign pensioners residing in certain States and to the nationals of certain States residing abroad.

Netherlands. — Miners' insurance.

Poland. — Intellectual workers' insurance. If a foreign State limits the rights of Polish nationals, the Government may, at the suggestion of the Minister of Labour and Social Welfare, limit the corresponding rights of nationals of this State under the Polish scheme.

Second Group

Schemes in which Foreigners Are Not Entitled to Supplementary Pensions Paid by the State or out of Joint Augmentation and Solidarity Funds, even when Residing in the Country of the Scheme

Austria. — Workers' insurance. The State supplement is paid only to nationals of countries granting equivalent treatment to Austrian subjects (legislative reciprocity). The portion of the pension ordinarily payable to the dependants of a pensioner maintained at public expense is not paid to dependants residing abroad.

Belgium. — Permanent schemes of workers', salaried employees' and miners' insurance. The maintenance of benefits during residence abroad is normal only in the case of pensioners whose rights were acquired under a permanent scheme. Benefits under transitional schemes are not payable during residence abroad unless granted on the basis of a minimum number of contributions; if granted

gratis or on the basis of a number of contributions less than the minimum, they are suspended during residence abroad.

France. — Employed persons' and miners' insurance.

Italy. — Employed persons' insurance.

Spain. — Employed persons' insurance.

Switzerland (Canton of Basle Town). — Cantonal old-age and widows' and orphans' insurance.

Third Group

Schemes in which Benefits Include a State Supplement Payable to All Beneficiaries during Residence Abroad

Czechoslovakia. — Workers' insurance.

Poland. — Industrial and commercial workers' insurance. Equality of treatment in case of residence abroad may be revoked for reprisal purposes.

Switzerland (Canton of Appenzell, Outer Rhodes). — Cantonal old-age insurance.

§ 2. — Maintenance of Rights for Nationals Only

Schemes which accept the principle of the maintenance of acquired rights during residence abroad do not as a rule make any distinction in this respect between nationals and foreigners. The equality of treatment thus established between all insured persons is, however, an equality of form only, since, as was mentioned above, the rights of foreigners may be altogether different from those of nationals even in case of residence in the country of the scheme. Equality of treatment during residence abroad then simply means that existing inequality is not made still more marked.

Nevertheless, two schemes restrict the maintenance of acquired rights during residence abroad to their own nationals; under both these schemes benefits are derived exclusively from contributions and are payable in full to foreigners residing in the country of the benefit-paying institution. Thus the disability applies to foreigners in case of residence abroad only.

Germany. — Salaried employees' insurance. Rights are maintained with one exception: whereas the dependants of the

pensioner whose rights are suspended during imprisonment may under certain conditions claim a proportion of the forfeited benefit, they cannot do so if they reside abroad. This restriction applies both to nationals and foreigners.

Netherlands. — Employed persons' insurance.

§ 3. — Restrictions Applying to All Beneficiaries

Possible restrictions on the acquired rights of insured persons or their dependants residing abroad may be classed as follows:

(*a*) authorisation to reside abroad as a condition of maintenance of rights;
(*b*) commutation of pensions;
(*c*) total or partial suspension of pensions.

Maintenance of Rights Conditional on Authorisation to Reside Abroad

The practice of maintaining acquired rights subject to authorisation, from the insurance institutions or an authority designated by legislation, to reside abroad is a restriction whose severity depends first on the circumstances in which authorisation is granted, and secondly on the consequences of refusal. There are schemes in which an authorisation need not be obtained in certain cases—when the beneficiary lives in a frontier district for instance—while in others it must be granted on fulfilment of certain conditions, if, for instance, the pensioner goes abroad for family reasons or reasons of health. On the other hand, it may be laid down that authorisation must be applied for in every case, that the institution is fully entitled to grant or refuse it, and that the decision made is not subject to appeal by the insured person.

The consequences of residence abroad without authorisation are most serious if the loss of the pension is entailed, and less so if the institution may pay the insured person a lump sum instead of his pension (commutation of pension).

The only scheme which provides for the loss of the right to benefit as a result of unauthorised residence abroad is that for the insurance of the staffs of private undertakings of public utility in

Argentina. The other schemes in this group permit the institution to pay a lump sum instead of the pension if authorisation is refused.

Austria. — Salaried employees' insurance. The need for an authorisation to reside abroad does not apply to the following:

Austrian and Czechoslovak nationals residing in Czechoslovakia (Austro-Czechoslovak treaty, Article 14);
Austrian and German nationals residing in Germany (Austro-German treaty, Article 12);
Austrian and Yugoslav nationals residing in Yugoslavia (Austro-Yugoslav treaty, Article 14).

Czechoslovakia. — Salaried employees' insurance. The need for an authorisation to reside abroad does not apply to the following:

Czechoslovak and Austrian nationals residing in Austria (Austro-Czechoslovak treaty, Article 14);
Czechoslovak and German nationals residing in Germany (Germano-Czechoslovak treaty, Article 3).

Luxemburg. — Salaried employees' insurance. The need for an authorisation to reside abroad does not apply to the following:

all beneficiaries whose residence abroad is due to considerations of health;
the nationals of States which allow similar advantages to Luxemburg nationals, provided that the Luxemburg Government has expressly waived the requirement of an authorisation from such persons.

Yugoslavia. — Salaried employees' insurance. The need for authorisation to reside abroad does not apply to the following:

Yugoslav and German nationals residing in Germany (Germano-Yugoslav treaty, Article 2, and Article 3, No. 1);
Yugoslav and Austrian nationals residing in Austria (Austro-Yugoslav treaty, Article 14, No. 1);
Yugoslav and Italian nationals residing in Italy (Italo-Yugoslav treaty, Article 34);

The treaties between Germany and Yugoslavia and between Austria and Yugoslavia add that very small pensions may be commuted for lump sums. The treaty between Italy and Yugoslavia provides (Article 32) that a beneficiary under the Yugoslav salaried employees' insurance scheme who returns to Italy or

lives there for more than three years may have the covering capital of his pension transferred to an Italian institution. The latter undertakes payment of the pension in lire at the exchange rate at which the capital was converted.

Commutation of Pensions

As was seen in the preceding chapter, the commutation of pensions for lump sums may be nothing but a simple conversion with no loss of rights (the pension being exchanged for its present value); on the other hand, it may mean very considerable loss if the insured person loses his pension and receives in exchange a fixed lump sum in no way representative of the forfeited rights.

Further, the hardship entailed by commutation varies according as the institution's power (provided in every case) to commute or not to commute is or is not accompanied by a corresponding right vested in the insured person; in some cases the institution may act without his consent, in others only on application from him. In either case the benefit, if not commuted, is suspended during residence abroad.

The severity of this restriction must therefore be judged according first of all to the mode of calculation of the lump sum, and secondly to whether the beneficiary may or may not veto commutation.

Further, it should be noted that commutation of a pension for a lump sum is nearly always the result of unauthorised residence abroad and is very rarely undertaken as a normal measure by the institution.

Mode of Computation

The simple conversion of the pension into its corresponding capital value is practised in *Luxemburg* (salaried employees' insurance), where the institution may, if it thinks fit, compensate a person to whom authorisation to reside abroad has been refused by paying him the constituent capital of the suspended pension.

Commutation with reduction of rights is found in *Austria* (salaried employees' insurance), *Germany* (miners' insurance) and *Yugoslavia* (miners' insurance), where the lump sum is equal to the pension for three years and one year respectively.

The salaried employees' insurance schemes in *Czechoslovakia* and *Yugoslavia* have adopted a compromise; provision is made for the payment of a sum which varies in Czechoslovakia according

to the result of a medical examination and may not exceed two-thirds of the constituent capital of the suspended pension, while in *Yugoslavia* it is equal to one-half this capital.

The institution may commute the pension irrespective of the beneficiary's consent. This position is found in *Germany* (miners' insurance) and *Yugoslavia* (salaried employees' insurance).

The institution may only commute the pension on application by the beneficiary. This position is found in *Austria* (salaried employees' insurance), *Czechoslovakia* (salaried employees' insurance) and *Yugoslavia* (miners' insurance).

Commutation of Pensions and Unauthorised Residence Abroad

Most schemes provide that the commutation of a pension is only permissible if the beneficiary resides abroad without authorisation; this therefore implies a refusal or withdrawal of such authorisation. Such is the case under the salaried employees' insurance schemes in *Austria*, *Czechoslovakia*, *Luxemburg* and *Yugoslavia*. Here the provisions of the laws and treaties limit the institution's power to commute the pension, not directly, but by waiving the requirement of authorisation in certain cases; they have already been examined above in the appropriate paragraph and will be passed over here.

On the other hand, in the *German* and *Yugoslav* miners' insurance schemes there is no provision for authorisation to reside abroad, the only arrangement being that the pension is forfeited and that the institution may pay a lump sum in compensation when it thinks fit. Under both these schemes the payment of benefit to pensioners who go to live in their country of origin may be continued on an exceptional basis, provided that the latter country gives similar advantages to German or Yugoslav subjects respectively. In each case legislative reciprocity must be formally recognised by the competent Minister.

In *Germany*, the miners' insurance scheme empowers the institution to commute the pension of an insured person who resides abroad of his own free will, irrespective of his consent, for a lump sum equal to the amount of the pension for three years. This power does not apply, and full payment of pension must be made:

(1) to persons residing in the Netherlands or the frontier districts of Austria, Belgium, Czechoslovakia or Switzerland;

(2) to German and Austrian nationals residing in Austria (Austro-German treaty, Article 12), German and Czechoslovak nationals residing in Czechoslovakia (Germano-Czechoslovak treaty, Article 4), and German and Polish nationals residing in Poland (Germano-Polish treaty, Article 6);

(3) to beneficiaries under German insurance schemes, whatever their nationality, who reside in France (Franco-German treaty, Article 4).

In *Yugoslavia*, the compensatory lump sum is equal to one year's pension. The power to commute does not apply, and the full payment of benefits must be made:

to Yugoslav and Austrian nationals residing in Austria (Austro-Yugoslav treaty, Article 14, No. 1);
to Yugoslav and German nationals residing in Germany (Germano-Yugoslav treaty, Article 3, No. 1);
to Yugoslav and Italian nationals residing in Italy (Italo-Yugoslav treaty, Article 34).

Total or Partial Suspension of Pensions

The suspension of part of pensions is not found in schemes which place foreigners on an equal footing in respect of the maintenance of acquired rights. Where it is found, the part suspended is nearly always the part paid by the State or out of joint augmentation and solidarity funds. When this portion of benefits is payable without exception to all pensioners—national or foreign—it is usually payable also whether or not the pensioner resides abroad. If, on the other hand, this portion of benefits is payable only to nationals, there is generally an apparent indentity of treatment for nationals and foreigners during residence abroad, in which case each group keeps the rights which it enjoyed in the benefit-paying country, the portion of benefits derived from the public funds being thus paid to nationals and refused to foreigners in whatever country they live. If, under such schemes, the State portion of benefits is suspended during the residence of the pensioner abroad, this can obviously only affect nationals, for they alone were entitled to this part in their own country.

None the less, it is pure chance that there is no legislation

suspending payment of the State portion of benefits to nationals and foreigners alike during residence abroad, for it can quite well be imagined that the payment of State benefits might be made conditional on residence in the country and on that alone.

However that may be, no scheme which places nationals and foreigners on an equal footing in respect of acquired rights actually does provide for the suspension of part only of these rights in case of residence abroad. Where there is suspension, it applies to all rights.

In the schemes which provide for it, suspension of rights may be the general rule—the automatic and normal consequence of residence abroad—or it may come into effect under certain conditions (residence abroad without authorisation and without commutation of the pension), or again it may apply in very exceptional cases only.

Suspension in exceptional cases is found in *Germany* and *Austria*, where the dependants of pensioners whose rights are in abeyance because they themselves are maintained at the public expense can claim part of the suspended pension if, and only if, they are resident in the benefit-paying country. In *Hungary* (miners' insurance) the Minister may, as a reprisal, suspend the enjoyment of the acquired rights of nationals or foreigners residing in certain States or of nationals of certain States residing abroad, but he has never yet made use of this power.

Suspension of benefits when the beneficiary resides abroad without authorisation and when the power to commute has not been used, appears in the salaried employees' insurance schemes of *Austria*, *Czechoslovakia*, *Luxemburg* and *Yugoslavia*. In the miners' insurance schemes in *Germany* and *Yugoslavia*, payment of benefits is suspended if the institution does not exercise its power to commute the pension. The exceptions to these regulations have already been described for each scheme, in connection with the requirement of authorisation and the power of commutation in case of residence abroad.

Only the schemes in which suspension is the general rule, the normal and usually automatic consequence of residence abroad, need therefore be dealt with here.

Denmark. — Old-age insurance. All benefits are suspended during residence abroad, except in respect of Danish and Icelandic nationals resident in Iceland (reciprocity treaty between Denmark and Iceland).

Great Britain and Northern Ireland. — Sickness and invalidity insurance, and old-age and widows' and orphans' insurance. Under the sickness and invalidity scheme, all benefits are suspended on departure for abroad except in case of temporary absence. The definition of a "temporary residence abroad" is left to the discretion of the institution.

Under the old-age and widows' and orphans' scheme, benefits are payable so long as the beneficiary resides in any part of the world subject to or under the protection of the King.

Irish Free State. — Sickness and invalidity insurance. Benefits are not suspended in case of temporary residence abroad.

Rumania. — Employed persons' insurance. Benefits are suspended in case of residence abroad, apart from reciprocity arrangements (no arrangement of this sort has yet been made).

Switzerland (Canton of Glarus). — Invalidity and old-age insurance. Suspension of benefits does not apply to the nationals of States which grant similar advantages to Swiss nationals.

U.S.S.R. — Invalidity insurance for employed persons. Pensioners who go abroad receive six months' pension in advance. Payment is not renewed for six months, and then only in case of return to the U.S.S.R.

§ 4. — Restrictions Applying to Nationals Only

The restrictions which apply to nationals only are not different in general character from those applying to nationals and foreigners alike. But in schemes which make maintenance of acquired rights during residence abroad dependent, for nationals only, on an authorisation to do so, an unauthorised absence is never accompanied by commutation of the pension for a lump-sum. On the other hand, nationals are often subjected to a special restriction, namely, the suspension of the portion of the benefits paid out of public funds. Restrictions affecting nationals' rights only may thus be grouped as follows:

(*a*) Maintenance of rights conditional on authorisation to reside abroad;

(*b*) Suspension of portions of benefits payable out of public funds.

Maintenance of Rights Conditional on Authorisation to Reside Abroad

Austria. — Miners' insurance. The need for authorisation does not apply to Austrian subjects residing in Czechoslovakia (Austro-Czechoslovak treaty, Article 14), Germany (Austro-German treaty, Article 12), and Yugoslavia (Austro-Yugoslav treaty, Article 14).

Bulgaria. — Employed persons' insurance.

Czechoslovakia. — Miners' insurance. The need for an authorisation does not apply to Czechoslovak subjects residing in Austria (Austro-Czechoslovak treaty, Article 14).

Hungary. — Employed persons' insurance. An authorisation is not required for short absences (of less than one month each) and absences caused by circumstances outside the pensioner's control; further, it must be granted in all deserving cases.

Luxemburg. — Workers' insurance. An authorisation to reside abroad must be granted if such residence is justified by reasons of health, family reasons or reasons connected with the welfare of the pensioner; an authorisation is not necessary if the pensioner moves into a frontier district or into the territory of a State which grants Luxemburg nationals advantages equivalent to those provided under the Luxemburg Social Insurance Act.

Suspension of Portions of Benefits Payable out of Public Funds

Suspension of this portion of benefit is provided for under the workers' insurance schemes in Belgium (non-contributory pensions) and Germany, and the national invalidity and old-age insurance scheme in Sweden.

Belgium. — Transitional scheme of workers' insurance. This scheme provides for the granting of pensions, or of the supplements which are the major portion of pensions, to certain groups of workers of Belgian nationality who were not required to make contributions or made but a very small number (less than the minimum number normally required to qualify for a pension). The payment of such non-contributory pensions is conditional on residence in Belgian territory.

Germany. — Workers' insurance. Under this scheme the pensions comprise three parts:

(1) a basic amount provided by the insurance institution[1];
(2) an increment varying with the amount of the contributions paid and also provided by the institution;
(3) a State subsidy.

The State subsidy is suspended during residence abroad. The application of this provision is limited by the terms of the Franco-German treaty, and by those of the treaty between Germany and Poland as far as nationals of the two last-named countries are concerned; in respect of Polish nationals, however, a supplementary agreement has yet to be concluded.

Further the State subsidy is not suspended during residence in the Netherlands or in the frontier districts of Austria, Belgium, Czechoslovakia and Switzerland.

Sweden. — National invalidity and old-age insurance. Pensions under this scheme (to which only Swedish nationals may belong) are composed of two parts: one varying with the amount of the contributions paid and payable regardless of place of residence, while the other is granted only in case of need and never during residence abroad.

§ 5. — Restrictions Applying to Foreigners Only.

Apart from the results which expulsion from the territory of the benefit-paying State following a conviction may have on the right to benefits, restrictions applying to foreigners only like those applying respectively to all beneficiaries and to nationals only may be placed in one of four groups:

(*a*) Maintenance of rights conditional on authorisation to reside abroad;
(*b*) Commutation of pensions;
(*c*) Partial suspension of pensions;
(*d*) Total suspension of pensions.

Maintenance of Rights Conditional on Authorisation to Reside Abroad

This is the position in *Austria* (miners' insurance), and *Hungary* (employed persons' insurance). The restriction does not, properly speaking, apply to foreigners only, for possession of an authorisa-

[1] See note on page 81.

tion to reside abroad is required of nationals also, but the consequence of failure to obtain such authorisation is not the same for nationals as for foreigners; in the former case the pension is merely suspended during unauthorised residence abroad, while in the latter it is commuted for a lump sum.

Commutation of Pensions

The commutation rule is of great importance when applied to foreigners only. When such a rule applies to all pensioners, the institution is (in all but a very few schemes) not obliged to enforce it; the pensioner directly concerned can choose between commutation and suspension, and if suspension is chosen the pension is resumed on the return from abroad. But the position is altogether different if the commutation rule applies to foreigners only, for the institution may then commute the pension if it thinks fit and the beneficiary is bound to accept its decision.

As in the case of a national, commutation of a foreigner's pension may mean either its simple conversion into its constituent capital implying no loss of value (*Austria*, miners' insurance; *Germany* salaried employees' insurance); or it may mean the substitution for a life or temporary pension, of a sum equal to that of the pension for a few years, and in no way representative of its capital value (workers' insurance schemes in *Germany* and *Luxemburg;* employed persons' insurance in *Hungary*).

Austria. — Miners' insurance. If a foreigner is refused authorisation to reside abroad, the pension may be commuted if the insurance institution so decides, even against the wishes of the insured person. The compensatory lump sum is equal to the capital constituting the pension. This provision is not applicable to Czechoslovak, German and Yugoslav nationals residing in their native countries (treaties between Austria and Czechoslovakia Article 14, Austria and Germany, Article 12, and Austria and Yugoslavia, Article 14).

Germany. — Salaried employees' insurance and workers' insurance. Under both these schemes the pension of a foreign national who habitually resides abroad, either of his own free will or through circumstances outside his control, may, whether he wishes or not, be commuted for a lump sum if the benefit-paying institution so decides. There is no similar provision in respect of German nationals.

For salaried employees, the lump sum is equal to the capital constituting the pension. For workers, it is equal to the amount of the pension for a period varying between 2½ and 6 years according to the risk covered and the age of the pensioner.

The commutation rule does not apply to:

(1) pensioners residing in the Netherlands (legislative reciprocity) or in the frontier districts of Austria, Belgium, Czechoslovakia and Switzerland (exceptions provided for in the scheme) [1].

(2) Austrian pensioners residing in Austria (Austro-German treaty, Article 12), Czechoslovak pensioners residing in Czechoslovakia (Germano-Czechoslovak treaty, Article 4); Polish pensioners residing in Poland (Germano-Polish treaty, Article 6); Yugoslav pensioners residing in Yugoslavia (Germano-Yugoslav treaty, Article 3, No. 1) [2];

(3) pensioners, whatever their nationality, who have acquired rights under German insurance schemes and reside in France or the Saar Territory (Franco-German treaty, Article 4, No. 1).

Hungary. — Employed persons' insurance. Under this scheme, the provisions concerning commutation are the principal differences in treatment between nationals and foreigners. For the former, absence despite refusal of authorisation simply means the suspension of benefits; for the latter, the consequences of such absence are far more serious, the pension being commuted, not for its constituent capital, but for a lump sum equal to its amount for one year only; and if the beneficiary does not claim this amount within five years of the payment of the last regular instalment, he loses all rights to a pension and lump sum alike.

Luxemburg. — Workers' insurance. The institution may commute the pension for a lump sum equal to its amount for three years even against the wishes of the beneficiary. This does not apply in case of residence in frontier districts or in the territory of States which grant Luxemburg nationals advantages equivalent to those accorded under the Luxemburg Social Insurance Act.

[1] In the case of residence in the above-mentioned frontier districts, the Federal subsidy is also paid, so that the assimilation of these districts to German territory is complete.

[2] The institution's power to commute a pension is only renounced in the case of Yugoslav nationals if their rights are under the salaried employees' insurance scheme.

Partial Suspension of Pensions

The benefits suspended may be either the portion of pensions provided by the public authorities (workers' insurance schemes in Belgium and Germany) or some other benefit (workers' insurance in Czechoslovakia; widows' and orphans' benefits under workers' scheme in Luxemburg, workers' and intellectual workers' insurance in Poland).

Belgium. — Transitional scheme of workers' insurance. The State supplements provided under the transitional scheme are not granted to foreigners unless they are nationals of States which grant equivalent advantages to Belgian nationals, and are suspended for foreigners who reside outside Belgium unless the States of which these persons are nationals allow Belgian pensioners such supplements when not residing in their territory.

Germany. — Workers' insurance. Benefits under this scheme include a State subsidy for all pensioners whatever their nationality, so long as they reside in German territory. This is usually suspended in case of residence abroad, even when the rest of the pension continues to be paid, unless provision to the contrary is made by law (frontier districts) or in reciprocity treaties (treaties with France and Poland)[1].

Czechoslovakia. — Workers' insurance and salaried employees' insurance[2].

Luxemburg. — Widows' and orphans' benefits under workers' scheme. The survivors of an insured person who are not resident in Luxemburg at his death receive only half the benefits to which they would otherwise have been entitled. This provision does not apply in case of residence in frontier districts or in the territory of a State which allows Luxemburg nationals advantages equivalent to those accorded by Luxemburg legislation.

Poland. — Workers' insurance and intellectual workers' insurance[2].

Total Suspension of Pensions

Except when it is a consequence of expulsion following on a conviction, the suspension of all benefit for foreigners alone results

[1] See above pp. 126 and 127.

[2] These schemes lay down that the competent Minister may, as a reprisal, suspend part at least of the benefits due, but no use has yet been made of this power.

either from the failure of the insurance institution to use its power of commuting pensions, or from legislative provisions automatically disqualifying foreign insured persons who reside abroad.

The former position is found in *Austria* (miners' insurance), *Germany* (workers' insurance and salaried employees' insurance), *Hungary* (employed persons' insurance), *Luxemburg* (workers' insurance). The exceptions provided for in these schemes (maintenance of rights conditional on authorisation to reside abroad under Austrian miners' insurance and Hungarian employed persons' insurance; commutation of pensions under workers' and salaried employees' insurance in Germany and workers' insurance in Luxemburg) were examined above in connection with the restrictions they place normally on foreigners' rights.

Suspension is the normal automatic procedure in the employed persons' insurance schemes in *Bulgaria* and the *Netherlands* and in the miners' insurance scheme in *Czechoslovakia.*

Bulgaria. — Employed persons' insurance. The pension is suspended if a foreign beneficiary leaves the country of his own free will or against it. Maintenance of benefits in case of reciprocity agreements is provided for, but Bulgaria has as yet concluded no such agreement.

Czechoslovakia. — Miners' insurance. Suspension is the procedure in every case except in respect of nationals of States whose legislation accords reciprocal advantages to Czechoslovak nationals. Reciprocity must be declared to exist by the supervisory authority of the miners' insurance scheme, that is, the Ministry of Public Works. Such declarations have so far been made in respect of Austria, Germany, Italy, Poland and Yugoslavia.

Netherlands.— Employed persons' insurance. Pensions are automatically suspended unless the insured person goes abroad for reasons of health or enters a country granting Netherlands nationals advantages equivalent to maintenance of the pension. Under the latter provision, German nationals going to live in Germany keep the benefits to which they are entitled under the Netherlands insurance scheme.

PART III

CONDITIONS OF APPLICATION OF TREATIES

Introduction

The subject of the present part of this volume is the conditions governing the application of bilateral treaties. After a review of the general rules for the application of treaties, a more detailed account is given in conformity with the object of this report, of the questions arising in connection with the maintenance of rights in course of acquisition and of acquired rights.

The first chapter deals with the putting into force of treaties. There are certain rules of international law, either general or special, which define the requisite conditions for putting treaties into force, i.e., signature, ratification, exchange of the instruments of ratification, registration and promulgation. Each treaty itself lays down the date of its coming into force and the period of its validity. A description is first given of the general effects of the coming into force of treaties, followed by an account of its special effects on the maintenance of rights in course of acquisition and of acquired rights. In regard to the main point for consideration here, namely, the commencing date of the scheme for the maintenance of rights in course of acquisition, most treaties apply even to insurance periods completed before they came into force, although they may differ in their definitions of the date from which previous insurance periods may be taken into account and of that from which benefits based on the totalisation of insurance periods may be paid. The chapter concludes by discussing the coming into force of the provisions to remove the condition of residence in the country of the responsible insurance institution as between the two contracting countries, and in the same connection, the commencing date for the payment of benefits previously withheld or suspended owing to the claimant's residence abroad.

The second chapter deals with mutual administrative and legal assistance. In order to simplify the administration of their

social insurance legislation, a number of States have agreed that their insurance institutions and administrative and judicial authorities shall afford one another assistance. This assistance is particularly important in respect of insured persons and pensioners who reside alternately in each country. After analysing the principles of administrative and legal asistance, it remains to define the institutions and authorities required to give assistance and the conditions prescribed for such assistance under the treaties, particularly in respect of the maintenance of rights in course of acquisition and of acquired rights under pension insurance.

The third chapter considers the treaty provisions regulating the settlement of disputes between States. The clauses of a treaty may sometimes give rise to differences of interpretation; in particular, disputes may arise in certain circumstances in respect of the somewhat intricate provisions for the maintenance of migrants' rights in course of acquisition. In such cases an attempt must first be made to reach a settlement by friendly agreement between the responsible central authorities of the two countries; should this method fail, recourse must then be had to arbitration. As the settlement of disputes arising out of the administration of social insurance treaties cannot be undertaken with any prospect of success without recourse to the collaboration of persons familiar with the workings of social insurance machinery, most of the treaties provide for a special arbitration body whose jurisdiction is confined exclusively to disputes arising out of the treaty. The constitution and functions of the arbitration court, the rules which it is required to apply, and the binding force of its awards are in due course described.

The final chapter deals with the expiry of treaties. Social insurance treaties intended to organise the maintenance of rights in course of acquisition and of acquired rights are not as a rule concluded for a period limited in advance. They are terminated either by non-renewal or by formal denunciation by one of the contracting parties, subject to specified time limits. After the expiry of the treaty no fresh rights may be claimed under its provisions; but it is a point of capital importance for migrants that most treaties scrupulously respect the principle of acquired rights. A great many of them provide, in fact, as regards the maintenance of migrants' rights, that neither the liabilities of the insurance institution arising out of preceding events nor any rights based on previous insurance periods shall be affected by the expiry of the treaty.

CHAPTER I

THE PUTTING INTO FORCE OF TREATIES

The purpose of the following chapter is to give an account of the rules governing the entry into force of social insurance treaties, as treaties under international law.

In the first section are discussed the conditions required for the putting into force of the draft treaty signed by the negotiators (i.e. ratification, exchange of the instruments of ratification, registration and promulgation), the provisions governing the date of its coming into operation, the general effects of its coming into operation, and the fixing of its duration.

The second section deals with the effects of the coming into force of the treaty on the insurance of migrants for which it provides. The chief points arising in this connection are whether the provisions of the treaty apply to periods in insurance prior to its entry into force, and if so from what date such periods are to be taken into consideration; from what date benefits are due under the treaty, and whether claims in respect of events giving rise to benefit which occurred before the treaty came into force are also covered by its provisions; and finally, whether claims accepted or rejected prior to the entry into force of the treaty are to be reconsidered with a view to bringing the benefits into line with the treaty provisions.

The last section considers how the coming into force of the treaty affects claims previously rejected or benefits suspended because the applicant was resident abroad, and, in the same connection, the conditions for the recognition of claims under the treaty, the resumption of suspended payments, and the date from which benefits become payable.

§ 1. — The Coming into Force of Treaties

Conditions for Putting Treaties into Force

Social insurance treaties are treaties governed by international law, and as such are concluded and put into force in conformity with the general principles of international treaty law. Without

claiming to be a complete account, a brief survey of the principal stages in the elaboration of international treaties is given below.

Negotiations for the framing of treaties are conducted by plenipotentiaries appointed by each of the States concerned. As a rule, these plenipotentiaries are accredited by the head of the State and have power to conduct the negotiations and if possible to frame a draft treaty. The persons entrusted with the negotiations are the usual diplomatic representatives of the country, e.g. the Foreign Minister and ambassadors. In the case of social insurance treaties, the plenipotentiaries in charge of the negotiations often also include official experts from the social insurance departments of the competent ministries.

If the negotiations are successful, the protocol agreed upon by the negotiators is signed and dated by them. It is customary to cite international treaties under the date of their signature by the negotiators. Actually, however, the document so signed is merely a draft treaty and is not yet binding. Before it can acquire the force of law it must be assented to by the national authority empowered to make treaties under the constitution of each of the countries concerned, usually the head of the State. His declaration of assent to the draft treaty drawn up by the negotiators and his formal undertaking in the name of his country to fulfil and observe its terms is known as ratification. In parliamentary countries the assent of the representative national bodies is also necessary for the ratification of treaties on certain subjects.

The treaty is not held to have a legal existence until it has received the assent in both States of the bodies competent to conclude international treaties. This assent is notified by the exchange of the instruments of ratification; when this formality has taken place, the treaty at last becomes a binding instrument under international law.

If the contracting States are Members of the League of Nations a further condition is necessary. Under Article 18 of the Covenant of the League of Nations, "every treaty or international engagement entered into by any Member of the League shall be forthwith registered with the Secretariat", and until this has been done the treaty does not become binding. The original text of these registered treaties, accompanied by a translation into the two official languages of the League, is published in a special Series [1]. Social insurance treaties, and any others which fall within its competence, are also

[1] *Treaty Series: Publication of Treaties and International Engagements registered with the Secretariat of the League of Nations.*

published by the International Labour Office in its collection of legal texts on social affairs [1].

International treaties are also promulgated under national law and made known to the authorities and people of each of the countries concerned in binding form through publication in its statute book or official gazette.

Other conditions may also be prescribed for the entry into force of treaties. Thus it is sometimes stipulated in the treaty itself that all or part of its provisions shall not become operative until certain supplementary agreements governing its application have been concluded. Again, a treaty may be put into force except for specified provisions, the application of which is made subject to a further agreement.

The various stages in treaty procedure may be illustrated by reference to the social insurance treaty concluded between Germany and Austria in 1930. This treaty was signed by the negotiators of both countries on 5 February 1930 in Berlin. The negotiators on the German side were a representative of the Foreign Office and a representative of the Federal Ministry of Labour, while Austria was represented by an official of the Federal Ministry of Social Administration. The draft treaty was assented to in Germany by the Committee of the Federal Parliament on 6 March 1931 and ratified by the Federal President on 24 March 1931. In Austria the treaty received the assent of the National Council on 27 December 1930, and of the Federal Council on 30 December 1930, and was ratified by the President of the Republic on 27 January 1931. The instruments of ratification were exchanged in Berlin on 31 March 1931. The treaty was then published in Germany as an appendix to the Assenting Act of 24 March 1931 [2], that is, even before the exchange of the instruments of ratification, the subsequent ratification being published by a notification of 2 April 1931 [3]. In Austria the treaty was published on 8 May 1931 [4], when it had already come into force.

Date of the Coming into Force of Treaties

With the exchange of ratifications the treaty is finally concluded, but there still remains the questions of the date from which it is

[1] *Legislative Series.*
[2] *Reichsgesetzblatt*, No. 7, Part II, 28 March 1931, pp. 57 et seq.
[3] *Reichsgesetzblatt*, No. 9, Part II, 15 April 1931, p. 233.
[4] *Bundesgesetzblatt*, 1931, No. 128.

to become legally operative. As a rule this date is specified in the treaty itself, and is fixed either at the date on which the instruments of ratification were exchanged or at some subsequent date. The latter method is the more usual in the case of social insurance treaties.

The object of postponing the entry into force of the treaty to a later date is obvious. It is intended to give the parties time to introduce the necessary measures for its application in the interval between the exchange of the instruments of ratification and the treaty's entry into operation. If this interval, sometimes called a *vacatio legis*, is not provided for, ratification of the treaty may be delayed merely because the States are obliged to take all the measures necessary for its application beforehand.

In order to make the entry into force of the treaty independent of the chance date of the exchange of ratifications and to facilitate its administration by providing for a short *vacatio legis*, it is usually stipulated that the treaty shall come into force on a definite date subsequent to the exchange of ratifications. The point of departure of the legal effects of the treaty, and in particular the date from which benefits under it are due, is clearly defined if the date on which the treaty is put into force coincides with the beginning of a calendar month. The most recent social insurance treaties frequently fix the date on which their provisions shall come into force at the first of the month following the exchange of the instruments of ratification. Thus, in the case of the social insurance treaty of 5 September 1931 between Austria and Czechoslovakia, which contains a clause of this kind, the instruments of ratification were exchanged on 27 April 1933 and the treaty came into force on 1 May 1933.

A number of States are bound by social insurance treaties laying down principles for branches of social insurance governed in one of the countries concerned by legislation which has not yet been put into operation. In such cases provision must be made for the entry into force of the relevant clauses of the treaty when the legislation concerned becomes operative, unless the regulation of migrants' insurance in these branches is held over for settlement later by a supplementary argument.

The following table shows the provisions regulating the putting into force of the different social insurance treaties as laid down in the treaties themselves.

DATE OF THE COMING INTO FORCE OF SOCIAL INSURANCE TREATIES

Countries	Date of coming into force
Germany-Austria (Article 32, No. 2).	(1) In respect of invalidity insurance, when the workers' and agricultural workers' insurance schemes become fully operative in Austria. (2) In respect of other branches, the first of the month following the exchange of the instruments of ratification (1 April 1931).
Germany-France (general convention, Article 19, No. 2; first supplementary agreement, Article 35, No. 2; second supplementary agreement, Article 35, No. 2).	First of the month following the exchange of the instruments of ratification.
Germany-Poland (Article 50).	First of the month following the exchange of the instruments of ratification (1 September 1933).
Germany-Czechoslovakia (Article 31, No. 1).	First of the month following the exchange of the instruments of ratification (1 December 1933).
Germany-Yugoslavia (Article 37, No. 1).	First of the month following the exchange of the instruments of ratification (1 October 1929).
Austria-France (Article 21, No. 2).	Date of the exchange of the instruments of ratification.
Austria-Czechoslovakia (Article 36, No. 1).	First of the month following the exchange of the instruments of ratification (1 May 1933).
Austria-Yugoslavia (Article 38, Nos. 1 and 2).	(1) In respect of invalidity insurance, when the workers' and agricultural workers' insurance schemes in both States come into force. (2) In respect of employees of the River Transport Company of the Kingdom of Yugoslavia, retroactively from 1 June 1930. (3) In other respects, the first of the month following the exchange of the instruments of ratification (1 January 1934).
Belgium-France (miners, Article 16, No. 2).	Date of the exchange of the instruments of ratification (14 June 1930).
Belgium-Netherlands (Article 9, No. 2).	One month after the first of the month following the exchange of the instruments of ratification (1 April 1933).
Belgium-Poland (miners, Article 31, No. 2).	Two months after the exchange of the instruments of ratification.
Spain-France (Article 21, No. 2).	First of the month following the exchange of the instruments of ratification.
France-Italy (Article 21, No. 2).	First of the month following the exchange of the instruments of ratification.
France-Poland (general, Article 15, No. 2).	Date of the exchange of the instruments of ratification (24 February 1923).
France-Poland (miners, Article 39, No. 3).	Date of the exchange of the instruments of ratification.

Countries	Date of the coming into force
Italy-Yugoslavia (Article 42).	First of the month following the exchange of the instruments of ratification (1 December 1928).

Legal Effects of the Coming into Force of Treaties

The legal effects of a treaty begin on the date on which it comes into force. Generally speaking, these effects are confined to the period following the treaty's entry into force, and may appear in two different ways. The existing legislation in the contracting countries may be altered or repealed by its provisions, or new legal relationships may be created which, being based essentially on international factors, could not previously be regulated by the individual States. In both these cases the treaty provisions usually apply from the date on which the treaty comes into force. This may be illustrated by a few examples.

Most social insurance treaties contain precise provisions defining the territorial scope of the national social insurance regulations of the contracting States. Under the territorial provisions of national legislation, national workers sent by an undertaking having its headquarters in State A to take up temporary employment in State B might become liable to insurance in both these States. In order to forestall this possibility the treaty alters the national provisions governing the scope of insurance, and places the responsibility for the insurance of such workers entirely on the scheme in State A, the liability to insurance in State B expiring on the date on which the treaty comes into force. Thus, in this case, the treaty alters the existing national legislation from the date on which it comes into force. To take a further example, many countries have legislation prescribing the suspension of pension payments to claimants domiciled abroad. If the treaty removes this restriction in respect of the other contracting State, the national regulations governing the suspension of claims cease to be applicable on the date the treaty comes into force.

On the other hand, treaties may also create new legal relationships. There are certain situations which are essentially of an international character, and can occur only in the relations between two or more States. An example is the situation arising out of the mutual legal and administrative assistance of the authorities and insurance carriers of various States. If an international treaty provides that the authorities and insurance institutions of both parties shall lend mutual assistance in legal and administrative matters, this new

legal relationship created by the treaty becomes operative when the latter comes into force.

There is another essentially international situation which has been a main consideration in the introduction of international arrangements for the insurance of migrant workers: that implied by the totalisation of insurance periods completed in two or more countries, which can be provided for only by international arrangements. As regards the period which it covers, however, an exception is usually made, in the interests of the insured persons, to the general rule that the treaty affects only the period subsequent to its coming into force. In order to allow the present generation of insured persons to benefit by the provisions for the insurance of migrants, it is usually stipulated that the treaty shall apply retroactively for the purpose of taking account of insurance periods completed before it came into force. These particular legal consequences of schemes for the insurance of migrants will be discussed in the second section of this chapter.

Duration of Treaties

As a rule, social insurance treaties are valid for a limited period only. The question of this duration may be settled by either of two methods: a specified period, reckoned from the date on which the treaty comes into force, may be agreed upon, or the treaty may be concluded for an indefinite period, either party being entitled to denounce it after a given date.

When a specified period is agreed upon, there are again alternative ways of defining it. In the first case the treaty may automatically expire at the end of the period for which it was concluded, a formal agreement being then required to prolong it. This way is sometimes unsatisfactory, and the more recent social insurance treaties therefore usually provide that the treaty shall continue in force after the date fixed for its expiry, unless before that date one of the contracting States notifies its desire to terminate it. In this case, therefore, the treaty is tacitly renewed. In the first case, definite action is required to prolong the validity of the treaty, and in the second only to terminate it.

If no definite period is specified, the treaty remains in force for an indefinite time. It may then be terminated after formal denunciation, usually subject to specified time limits.

Both these methods are used in regulating the duration of social insurance treaties.

The following treaties provide for a specified period of validity, subject to tacit renewal: Germany-France, Austria-France, Belgium-France (miners), Belgium-Netherlands, Belgium-Poland (miners), Spain-France, France-Italy and France-Poland (general and miners). In all these treaties both the original duration and each subsequent tacit renewal are for periods of one year, except for that between Belgium and the Netherlands, which provides for a two-year period in both cases.

The treaties concluded for an indefinite period, subject to termination after due notice, are the following: Germany-Austria, Germany-Poland, Germany-Czechoslovakia, Germany-Yugoslavia, Austria-Czechoslovakia, Austria-Yugoslavia, Italy-Yugoslavia.

In the absence of mutual agreement to the contrary, amendments to national legislation do not affect the validity of the treaties.

§ 2. — Commencing Date for Migrants' Insurance

Effects of Treaty on Previous Insurance Periods

As described in the previous pages, the provisions of social insurance treaties usually take effect on the date of the exchange of the instruments of ratification, or even on a later date. This arrangement does not, however, meet the special requirements of insurance for migrant workers. It is essential that treaties governing this matter should also take into account insurance periods completed before the treaty came into force; international insurance for migrant workers must cover insurance periods completed in the past. The technical and social reasons governing this requirement are outlined below.

Under pension insurance schemes the insured person is usually required to have completed several contribution years before he can establish his claim to a pension of prescribed amount. The persons to whom the pensions are granted must belong more than merely temporarily to the economically weak sections of the population for which social insurance was set up. Pensions fixed at a flat rate without regard to the length of the contribution period are granted only after the completion of a qualifying period extending over a number of years, which entails payment of a prescribed number of contributions either within a specified time immediately preceding the event on which the claim is based, or since the insured person first entered insurance. In the latter case, however, a further

condition is required, namely, that the insured person shall have kept his insurance alive.

If provisions for the maintenance of rights in course of acquisition are introduced as between two States, there is no reason why the periods spent in insurance before the treaty came into force should be left out of account. Otherwise, only a small fraction of the population insured at the time would secure the advantages of the new provisions, since the insurance periods completed before the treaty entered into force could not be taken into account in awarding and computing benefits. Now, it is precisely the aim of measures for the insurance of migrant workers to enable these workers to maintain the rights which they have acquired through the payment of contributions in their country of origin; and once this principle has been recognised there is no justification for withholding this advantage from the generation of persons insured when the treaty comes into force. The only way to prevent injury to the worker's interests in consequence of his emigration is to take into account all the insurance periods, whether completed before or after the treaty comes into force. Hence the international arrangements for the insurance of migrants in principle cover the periods spent in insurance prior to the conclusion of the treaty by which such arrangements were introduced.

The insurance periods completed before the entry into force of the treaty are not, however, unreservedly taken into account. The restrictions on the retroactive force of treaties will be discussed in detail later, but it is necessary first to ascertain the nature of the periods which the treaty covers. These may already have ceased to count when the treaty comes into force, or may still be valid; or, again, the rights acquired through the completion of given insurance periods may already entitle the insured person to benefit in one or both of the contracting countries.

Commencing Date for Totalisation of Insurance Periods

It has been seen that insurance periods completed prior to the treaty are normally also taken into account. In this connection two points require more detailed consideration: first, the legal effects of insurance periods previously completed, and secondly, possible restrictions on the principle of retroactivity.

Insurance periods may be important for a number of different purposes, according to the insurance scheme under which they are completed. They may affect the maintenance of rights in course

of acquisition, the calculation of the qualifying period, the recovery of rights which have been allowed to lapse, the right to voluntary continuation in insurance, or the right to the payment of continuation fees. Insurance periods completed before the treaty came into force may be totalised for all or only for some of these purposes, according to the treaty concerned.

As a rule insurance periods completed before the treaty came into force are totalised for all purposes. Thus they are always taken into consideration in respect of the maintenance of rights in course of acquisition and the completion of the qualifying period. As regards the right to continue in voluntary insurance, however, the addition of previous periods in insurance is sometimes subject to special restrictions.

This point may be explained in rather more detail. Under the national legislation of one of the contracting countries the right to continue in voluntary insurance may be conditional on the previous payment of a minimum number of contributions in compulsory insurance. Moreover, when an insured person ceases to be liable to compulsory insurance he may have to begin paying his voluntary contributions at once, or at least within a short specified time limit, the object of this provision being to prevent as far as possible a worsening of the risk between the time when compulsory insurance ceases and voluntary insurance begins. Under several social insurance treaties, therefore, persons whose liability to compulsory insurance ceased before the treaty came into force may indeed enter voluntary insurance, but only under stricter conditions, which will be more fully analysed below.

To turn now to the question of the limit of time set to the retroactive effect of treaties, this is usually unrestricted as regards the insurance periods which may be taken into consideration, on the ground that only on this condition can an unbroken and uniform insurance career be restored to persons insured when the treaty came into force. Some treaties, however, are retroactive only over a given period; in such cases a specified date prior to that on which the treaty came into operation is fixed as the limit from which previous insurance periods may be reckoned.

As a rule, account is also taken of insurance periods which, owing to the absence of provision for reciprocity, had already ceased to count when the treaty was concluded, since otherwise the latter would fail to benefit precisely those workers whose security was most seriously imperilled by the former lack of international arrangements for the insurance of migrants. Hence

the treaty is given retroactive force in respect of insurance periods which have already lapsed; rights acquired in the country of emigration, but subsequently lost owing to the insured person's transference to the insurance scheme of the country of immigration are re-established.

Nevertheless, although unrestricted in respect of rights in course of acquisition, the retroactive effect of the treaty in respect of the recovery of rights already lost is sometimes subject to a specified limit of time. There are several reasons for this discriminatory treatment. In this case, as in others subject to prescription, to revalidate rights lost many years earlier might place a heavy burden on the insurance carrier, while also involving insuperable administrative difficulties as regards the verification of events giving rise to benefit which occurred in the distant past.

The provision that insurance periods completed in either of the two States before the treaty came into force shall be placed on the same footing as others is usually couched in the following terms: " In the application of the provisions of this Treaty insurance periods completed before the coming into operation thereof shall also be taken into consideration ". This provision, with only slight variations, occurs in the treaties concluded by Germany with Austria (Article 32, No. 3), Poland (Article 48, No. 2), Czechoslovakia (Article 29), and Yugoslavia (Article 39).

A similar clause appears in the treaties concluded by Austria with Czechoslovakia (Article 36, No. 2) and Yugoslavia (Article 39, No. 1), but in this case special restrictions on the right to enter voluntary insurance, which still remain to be discussed, are also included.

The treaties between Belgium and Poland (miners, Article 23, No. 1) and France and Poland (miners, Article 28, No. 1) also contain the same clause, but subject to restrictions respecting the recovery of rights, also discussed below.

A provision similar in essentials appears in the treaties of France with Germany (general convention, Article 19, No. 6), Spain (Article 21, No. 6), and Italy (Article 21, No. 6), stipulating that, in fixing or revising pensions after the coming into operation of the treaty, insurance periods completed before that date shall also be taken into account.

Treaties having retroactive effect over a limited period in respect of rights which have lapsed but may be re-established under their provisions are those between Belgium and Poland (miners, Article 18) and between France and Poland (miners, Article 23). These provide in respect of benefits under the Polish

scheme (rights are automatically maintained under the Belgian and French schemes without limit of time) that the rights of insured persons which have already lapsed may be recovered only if such rights lapsed after 1 January 1924 and during the emigrant's residence in the territory of a contracting party.

The right to continue insurance as a voluntary contributor, in so far as it is based on previous insurance periods, is subject to restriction under the treaties concluded by Austria with Czechoslovakia (Article 36, No. 4) and Yugoslavia (Article 39, No. 1). Insurance periods completed before these treaties came into force entitle the worker to enter voluntary insurance subject to his making application within a definite time limit, and provided that the event insured against occurred not less than eighteen months after the treaty came into force. This precaution is intended to eliminate as far as possible events which were already imminent when the treaty became operative. The treaty between Austria and Czechoslovakia lays down yet another condition: insured or formerly insured persons are not entitled to continue in voluntary pension insurance, even if at the date when their liability to insurance expired the periods of insurance completed in both countries could be added together under the provisions of the treaty, unless such periods also amounted in all to at least sixty contribution months; that is to say, the qualifying period prescribed by the stricter Austrian legislation must also have been completed when the insured person ceased to be liable to insurance.

Commencing Date for Payment of Benefit

Treaties of reciprocity must cover not only events giving rise to insurance benefits which may occur in the future, but also those which have already occurred when their provisions come into force. This is essential to protect the interests of just those insured persons who suffered most from the former absence of such arrangements. When deciding as to the award and amount of the pensions due to insured persons who, having worked successively in two countries and paid insurance contributions, had reached pensionable age before the treaty came into force, the insurance carriers had formerly taken into account only the insurance periods completed in the country concerned. In such cases the treaty involves a re-assessment of the pension, taking into consideration the insurance periods completed in the other country as well.

The treaties thus cover events giving rise to pension which took place before they came into operation. These events are, as it were, resuscitated, and the treaty arrangements become applicable to them as if the provisions for the totalisation of insurance periods had already been in force when the event insured against occurred.

In this connection special importance attaches to the distinction between the award and the actual payment of the pension. Normally, of course, the award and the payment coincide. But in exceptional cases the applicant's claim may be recognised without immediately being honoured by payment.

The retroactive force of treaties may operate on insurance claims for preceding events in two different ways: (*a*) the award may be fixed retrospectively, but carry the right to payment only as from the date on which the treaty comes into operation, or (*b*) the award is fixed retrospectively and also carries with it the right to the payment of arrears of pension. The former of these two methods is the more usual.

This retroactive principle is expressed in treaty language by a clause stipulating that " the provisions of the Treaty shall be operative as from the date of its coming into operation even with respect to preceding events giving rise to benefit ". Many treaties, however, also contain an additional clause expressly stating that no payment of arrears is due for the period preceding their entry into operation.

If no arrears of pension are payable by the insurance carrier to the insured, it is only fair that no refunds should be required from the beneficiary to the insurance carrier. Refunds on account of pensions higher than those due under the treaty are a corollary of the payment of arrears of pension, and if the former are excluded the latter must be too. Hence, most treaties provide that beneficiaries shall not be required to make a refund in respect of pensions which were higher than those due to them under the treaty.

If lump-sum benefits have been granted, however, it is usually provided that these shall be deducted from any pension payments which subsequently become due. But to prevent the hardships which might arise in cases where lump sums had been granted many years previously—i.e. for events giving rise to benefit which had occurred long since—the deduction of lump-sum benefits from subsequent pension payments is not as a rule prescribed when the event giving rise to such benefits occurred prior to a specified date.

The retroactive force of treaties, as will be described later,

may be subject to a time limit, but it may be quite inoperative in certain cases, even if the events insured against fell within the time limit. This is the case, for instance, if a pension was legally awarded in both countries before the treaty came into force. These pensions are based on the insurance period completed in each country, and must be maintained. As a rule, the pensions payable when the insurance periods completed in each country are reckoned separately are together higher than the aggregate of the part-pensions based on the totalisation of the insurance periods, since these parts are subject to deductions. The main purpose of giving retroactive effect to the treaty is to ensure that all preceding periods in insurance shall be deemed to be valid for the purpose of previous events giving rise to benefit, in order that insurance periods under both national schemes may be taken into considera-ion. But if in exceptional cases the insured person has qualified or benefit in both countries separately, irrespective of any bilateral rovisions for reciprocity, the settlement under national law—in itself satisfactory—may be left unaltered.

The retroactive force of treaties involves the review of claims already settled. The provisions governing this procedure will be discussed in the following section; but it is first necessary to consider how the treaties fix the date from which benefit is payable on account of events insured against which have already happened.

Most treaties lay down that their provisions shall apply from the date of their coming into force even with respect to preceding events giving rise to benefit. This clause is contained in the treaties between Germany and Austria (Article 32, No. 3), Germany and Poland (Article 48, No. 3), Austria and Czechoslovakia (Article 36, No. 2), and Austria and Yugoslavia (Article 39, No. 1). The second supplementary agreement concluded under the treaty between Germany and France (Article 25, No. 3) also follows the same lines, and an equivalent clause appears in the treaties between Belgium and Poland (miners, Article 23, No. 2) and France and Spain and France (Article 21, No. 5), and France and Italy (Article 21, No. 5), precise regulations for the application of the treaty provisions to preceding events giving rise to benefit are reserved for the supplementary agreements.

The retroactive application of the provisions is limited to a certain period in all respects under the treaty concerning miners' insurance between Belgium and France concluded in 1927. Accord-ing to Article 8, miners' pensions on account of preceding events

are granted only to persons who had reached pensionable age before 1 January 1926 or who were employed in mining work as insured workers after that date. The provisions of this treaty apply to widows and orphans if the husband or father died after 31 December 1925.

The retroactive application of the treaty is limited for certain purposes only in that between Austria and Czechoslovakia: under Article 36, No. 2, its provisions are not applicable to preceding events giving rise to benefit on account of which a pension was legally awarded in both States before the treaty came into operation, or if even under the treaty no *pension* would have been due in either of the two States.

Payment of arrears for periods preceding the coming into operation of the treaty is expressly forbidden under the treaties between Germany and Austria (Article 32, No. 4), Germany and France (second supplementary agreement, Article 25, No. 3), Germany and Poland (Article 48, No. 8), Austria and Czechoslovakia (Article 36, No. 3) and Austria and Yugoslavia (Article 39, No. 2).

Similarly, the following treaties expressly stipulate that no refunds shall be made in respect of the payment of pensions higher than those due under the treaty provisions: Germany-Austria (Article 32, No. 4), Germany-France (second supplementary agreement, Article 25, No. 3), Germany-Poland (Article 48, No. 8), Austria-Czechoslovakia (Article 36, No. 3), Austria-Yugoslavia (Article 39, No. 2).

Lump-sum payments awarded in the past are repayable by deduction from pensions awarded subsequently under the following treaties: Germany-Austria (Article 32, No. 4), Austria-Yugoslavia (Article 39, No. 2), Spain-France (Article 21, No. 5) and France-Italy (Article 21, No. 5). A similar provision was laid down in the treaty between Austria and Czechoslovakia (Article 36, No. 3), but it does not apply to lump-sum payments made before 1 January 1929.

Whereas all the treaties mentioned above recognise the principle that their provisions shall apply to preceding events giving rise to benefit, the principle is excluded from the treaties between Germany and Czechoslovakia (Article 28, No. 1) and Germany and Yugoslavia (Article 38, No. 1). Under both these treaties the question whether the events giving rise to benefit occurred before or after the date of their coming into force is irrelevant only in so far as concerns the equality of treatment of the nationals of

the two countries; the provisions for the insurance of migrants have no retroactive effect, and apply only to events giving rise to benefit which occur after the treaty comes into force.

Review of Previous Awards

It has been seen that most treaties take the line of extending the operation of their provisions to previous insurance periods and preceding events giving rise to benefit. It now remains to discuss the means by which this retroactive principle is applied.

For events insured against which have not yet occurred, the verification of previous periods in insurance is not normally a matter of urgency. Such periods become important only on the occurrence of the event, and can then be taken into consideration in the same way as those completed after the treaty came into operation. There are only two points on which special procedure is laid down in certain treaties.

In the first place, a number of treaties require that application shall be made for the re-establishment of lost rights which may be recovered under the treaty. Failing such application these rights cannot be recovered, there being no provision for *ex officio* review; it must, moreover, be lodged within a specified time limit beginning at the date on which the treaty came into force.

Secondly, under some treaties previous periods in insurance confer the right to enter voluntary insurance only on the express condition that the first voluntary contribution is paid within a specified time limit dating from the entry into force or promulgation of the treaty.

More important administrative problems arise in connection with preceding events giving rise to benefit. When the treaty becomes enforceable it creates new claims, which must be decided by the regular procedure for awards. The claims both of claimants who were not previously drawing pensions and of those who were already beneficiaries must or may be investigated anew. Claims which before the treaty had been legally rejected under national legislation must be re-examined in the light of the new arrangements for reciprocity, and current pensions must be reviewed in accordance with the treaty provisions.

Under most treaties pensions are reviewed only on the application of the person concerned, but it is sometimes prescribed that review procedings may be opened *ex officio* or, again, at the request of an insurance institution.

There are, however, certain exceptional cases in which claims may not be re-examined. For instance, review is not allowed in respect of claims which are due to expire soon after the treaty comes into force, only those which have still a certain time to run being eligible for reconsideration. It would be pointless, for example, to review the orphans' allowances payable to children who would reach the age limit at which they expire soon after the treaty came into force.

The re-opening of an award is sometimes made subject to a time limit, applications being receivable only within a specified period. This time limit applies in particular in respect of pension claims rejected before the treaty came into force, and some treaties also expressly stipulate that it shall apply to claims which are under investigation when the treaty comes into force.

A few examples of the treatment of these problems in treaty practice may be added to this general account.

Application for consideration of previous insurance periods which have ceased to count under national legislation is necessary under the treaties between Belgium and Poland (miners, Article 18) and France and Poland (miners, Article 23). Such application must be made to the competent insurance institution within two years of the treaty's coming into force. The treaty between Germany and Poland (Article 38) provides that insured persons may recover rights which lapsed after 1 November 1918 upon submitting an application to this effect within one year of the coming into force of the treaty.

Under the treaties between Austria and Czechoslovakia (Article 36, No. 4) and Austria and Yugoslavia (Article 39, No. 1), previous periods in insurance count for the purpose of the insured person's right to enter voluntary insurance, only if he makes application and subject to his paying his first contribution within three months, dating, in the case of the treaty between Austria and Yugoslavia, from its entry into force, and in the case of that between Austria and Czechoslovakia, from the date of its publication in both countries.

The treaty between Germany and Poland (Article 38, No. 8) allows the voluntary payment of arrears of contributions for the period between 1 January 1924 until the date of the treaty's coming into force only if effected within one year of the latter date.

Express provision for the review of pensions awarded for preceding events, with a view to bringing them into line with the treaty provisions, is made by the treaties between Germany and

France (second supplementary agreement, Article 25, No. 3), Belgium and Poland (miners, Article 23, No. 2) and France and Poland (miners, Article 28, No. 2).

As a rule the proceedings are re-opened at the request of the claimant. The treaty between Austria and Czechoslovakia (Article 36, No. 2) provides that they may also be opened *ex officio*, but must always be opened on application by the claimant or by an insurance institution. Under the treaty between Belgium and France (miners, Article 12, No. 1), the date from which the revised benefits are payable depends on the date on which application for review was made, being fixed at the first day of the month following that in which the claim was lodged.

The treaty between Germany and Poland (Article 48, No. 6) provides that pensions awarded previously may be reviewed in accordance with its provisions only if they are not due to expire within three months of its coming into force. Under the same treaty (Article 48, No. 7), application for the re-examination of rejected claims must be made within a year of the treaty's entry into force, and claims to benefit which are still under investigation must be settled in accordance with its provisions.

§ 3. — Effect of Treaties on Insured Persons Resident Abroad

Award of New Pensions and Resumption of Suspended Payment

A great many national insurance schemes restrict the rights of claimants residing or migrating abroad. These restrictions apply sometimes to aliens and nationals alike and sometimes only to aliens. They may take various forms. In some cases the continuation of the pension is left to the discretion of the insurance institution. In others the pension payable to a person resident abroad may be commuted either *ex officio* or at his own request for a lump sum smaller than the capitalised value of the pension. Sometimes the supplements to insurance benefits provided out of public funds are reduced or withdrawn; or finally, the pension may be entirely suspended.

It is one of the objects of social insurance treaties to remove, as between the contracting countries, all the restrictions on the rights of insured persons resident abroad. They seek to place on the same footing the nationals of the two countries residing in

either of the national territories. The territory of the other party to the treaty is thus considered for social insurance purposes as equivalent to national territory, so that residence in that country is no longer held to be residence abroad, and the consequent restrictions automatically cease to apply.

What is the effect of social insurance treaties on persons who, although otherwise qualified for benefit, have been debarred from receiving payments because they were or are resident abroad in the territory of the country which is now a party to the treaty ?

In order to revalidate rights to benefit on account of events previous to the treaty's coming into force which lapsed or were suspended merely because the claimant resided in the other country, treaties often expressly stipulate that their provisions shall also apply to preceding events giving rise to benefit. This allows of the re-establishment of claims suspended or rejected owing to the claimant's residence abroad. Sometimes a limit of time is set in this respect; for example, persons living abroad when the treaty came into force and debarred from benefit on this ground may have their claim reconsidered only if the event insured against occurred between a certain date specified in the treaty and the date on which the latter came into force.

Failing any specific provision for the retroactive application of the treaty, it must be assumed that it does not affect claims to benefit on account of preceding events which were rejected owing to the applicant's residence abroad. In such cases the treaty covers only events giving rise to benefit which occur after it comes into force. But at the same time, the general provisions of the treaty ensure that a worker who goes to live abroad after it becomes applicable shall not thereby be disqualified for any benefits on account of events which occurred previous to his emigration, provided that his claim had already been recognised.

National insurance schemes under which the rights of workers resident abroad are subject to various restrictions, such as the suspension of payment, sometimes contain provisions intended to mitigate the hardship to such claimants. The pension is not payable abroad, but may or must be commuted for a lump sum amounting to less than its capitalised value, in final settlement of all insurance claims.

As the effect of social insurance treaties is to place residence in the territory of the other country on the same footing as residence in the home country, these treaties must also provide for the case of beneficiaries whose pensions were commuted because they lived

abroad. Are the pension rights recovered and the lump sums granted deducted from subsequent payments ? Generally speaking, the treaties provide for the deduction of lump-sum payments previously awarded from pension payments made after the treaty comes into force, and only in a few cases is it stipulated that, although a lump sum has already been paid, there shall be no consequent deduction from pension payments if the event giving rise to benefit occurred a long time ago.

Commencing Date for Payment of Benefit

It has already been noted in another connection that the actual payment of benefit may not always coincide with its award. It sometimes happens that the treaty revalidates old claims, but that the consequent benefit is payable only from the date of the treaty's coming into force. It also happens, however, that arrears of pension are paid up in respect of periods before the treaty came into operation.

As a rule, and failing any special provisions, benefits under the treaty are payable only as from the date on which it comes into force. No payments are made in arrear for claims rejected or suspended owing to the claimant's residence abroad, and no refunds are due from the insured person to the insurance institution, although lump-sum payments made in the past may be deducted from future pension payments.

Several treaties, however, contain express provision for the payment of arrears of benefit. In such cases, a term is set beyond which no arrears are payable; that is to say, retrospective payments are made on account of benefits due for a period extending backwards from the date the treaty came into force but not beyond a specified date.

Most treaties contain the clause already mentioned in another connection, providing for their application to events which occurred before they came into operation. This clause appears in the treaties between Germany and Austria (Article 32, No. 3), Germany and Poland (Article 48, No. 3), Austria and Czechoslovakia (Article 36, No. 2), Austria and Yugoslavia (Article 39, No. 1), Belgium and Poland (miners, Article 23, No. 2), Spain and France (Article 21, No. 5), France and Italy (Article 21, No. 5), and France and Poland (miners, Article 28, No. 2).

The treaties providing that lump-sum benefits granted before they came into force shall be deducted from pension payments

which become due subsequently are the following: Germany-Austria (Article 32, No. 4), Austria-Yugoslavia (Article 39, No. 2), Spain-France (Article 21, No. 5), and France-Italy (Article 21, No. 5).

The treaty between Austria and Czechoslovakia (Article 36, No. 3) also provides that previous lump-sum payments shall be deducted from subsequent pension payments, but only if the event giving rise to benefit occurred after 1 January 1929. Lump sums paid on account of events which occurred before that date are no longer recoverable.

The fact that preceding events are taken into consideration, however, does not necessarily involve the payment of arrears for the period preceding the treaty's entry into force. This is specifically stated in the following treaties: Germany-Austria (Article 32, No. 4), Germany-France (second supplementary agreement, Article 25, No. 3), Austria-Czechoslovakia (Article 36, No. 3).

On the other hand, a few treaties recognise the principle of the payment of arrears, in particular that between Germany and Poland (Article 48, No. 1), which came into force on 1 September 1933 and prescribed the payment of certain suspended pensions as from 1 July or 1 October 1931. Similarly, the treaty signed on 21 July 1931 between Austria and Yugoslavia stipulates (Article 38, No. 1) that its provisions shall apply retrospectively for a specified group of persons, operating as from 1 June 1930 in respect of employees of the River Transport Company of the Kingdom of Yugoslavia.

CHAPTER II

MUTUAL ADMINISTRATIVE AND LEGAL ASSISTANCE

The application of social insurance schemes requires the co-operation of insurance institutions, administrative authorities and tribunals. Normally, the authority of these bodies ceases at the borders of the territory of the State concerned, but it may nevertheless happen that in administering social insurance certain legal operations must be performed outside its borders. It may be necessary, for instance, to verify the existence or continuance of the right to benefit of insured persons resident abroad: medical examinations may have to be undertaken, or confirmation of a person's existence obtained, abroad.

These legal formalities outside the country's territory may be undertaken by either of two methods: they may be delegated to its official representatives in the foreign country concerned, or to the authorities of the foreign country.

As regards the country's official representatives abroad, these can assist in the application of social insurance only to a very limited extent. The most important are the consular authorities, whose legal competence in the domain of social insurance is restricted both under general international law and under special consular agreements. Moreover, the consular authorities, who are responsible for the most varied duties, are not always technically competent to deal with social insurance matters.

Hence, with the growth of social insurance both in scope and in importance, it has been found necessary to extend the mutual legal and administrative co-operation which has always existed between countries to the domain of social insurance. The insurance institutions and authorities of the one State enlist the help of those of the other for the application of social insurance. This, however, cannot be done without a previous bilateral agreement between the States concerned, since under national law it is neither compulsory nor sometimes even permissible to perform legal formalities on behalf of foreign authorities. Social insurance

treaties therefore contain a series of provisions to regulate mutual assistance in the application of provisions laid down by bilateral agreements or by national legislation.

The first section of the following chapter describes the mutual administrative assistance required of the authorities of the two countries, discussing the bodies responsible for affording assistance, the nature of the assistance as prescribed in the treaties, and finally, the methods by which it is given.

The second section considers the questions connected with mutual legal assistance in the same order.

The third section is devoted to the subject of assistance in applying the international provisions for the insurance of migrants, and deals with the submission of claims, the exchange of information between insurance carriers in respect of awards of benefit, and the verification of the presence of the conditions of benefit.

Finally, the fourth section examines the question of assistance in connection with the payment of pensions to claimants resident abroad. Here the special points for consideration are the extent to which legal formalities carried out by the insurance carriers or authorities of one country must conform with those prescribed in the other, the investigation of the continuance of the claimant's right to benefit, and the payment of benefit through the insurance institution of the country in which the claimant is resident.

§ 1. — Mutual Administrative Assistance

Bodies Affording Assistance

The principal bodies engaged in the application of social insurance are the insurance institutions and the administrative authorities. These are therefore also the principal parties concerned with the granting of administrative assistance.

The insurance carriers act as the focus of the legal relationships created by insurance, and frequently have occasion to call on corresponding bodies in foreign countries for assistance in the fulfilment of their duties. It is the insurance institution which is responsible for investigating claims; if, therefore, the claimant to a pension is resident abroad, the responsible institution will have to request the foreign insurance institution competent for the locality in which the claimant resides to ascertain whether he fulfils the requisite conditions of benefit.

Among the authorities which may be called upon for administrative assistance a distinction must be made between general authorities and special social insurance authorities. Recourse may be had to general authorities, such as registrars of births, marriages and deaths, for instance, when it is necessary for insurance purposes to ascertain the date of the claimant's birth. On the other hand, social insurance authorities, both central and local, may be called upon to co-operate in their capacity of supervisory authorities.

In fact the authorities required to supply administrative assistance under the various bilateral treaties of reciprocity include not only insurance carriers but all those administrative authorities which collaborate in the application of social insurance in other ways. Insurance carriers and administrative authorities are required to furnish administrative assistance under the treaties between Germany and Austria (Article 4, No. 1), Germany and France (Article 14), Germany and Poland (Article 7, No. 1), Austria and Yugoslavia (Article 4, No. 1), Belgium and the Netherlands (Article 6), France and Spain (Article 16), France and Italy (Article 16), and Italy and Yugoslavia (Article 26).

On the other hand, administrative assistance may be demanded only of insurance institutions and special social insurance authorities under the treaties between Germany and Czechoslovakia (Article 6, No. 1), Germany and Yugoslavia (Article 7, No. 1), Austria and Czechoslovakia (Article 4), Belgium and Poland (miners, Article 26), and France and Poland (miners, Article 33).

Nature of Assistance

There are two ways in which treaties may define the nature of the administrative assistance which is to be afforded; either by means of a general clause, or by enumerating the particular cases giving rise to such assistance. In most treaties these two methods are found side by side.

The general clause usually specifies that the bodies to which application for administrative assistance is made must grant such assistance to the bodies making the application to the same extent as would arise in the administration of their own social insurance.

This clause, or a similar one, is found in the following treaties: Germany-Austria (Article 4, No. 1), Germany-France (Article 14), Germany-Poland (Article 7, No. 1), Germany-Czechoslovakia (Article 6, No. 1, and Article 5), Germany-Yugoslavia (Article 7,

No. 1, and Article 6, No. 1), Austria-Czechoslovakia (Article 4), Austria-Yugoslavia (Article 4, No. 1), Spain-France (Article 16), France-Italy (Article 16), Italy-Yugoslavia (Article 26).

When the general clause is thus drafted, however, the question arises whether the authorities whose assistance is solicited must give such assistance only in respect of actions covered by their national legislation, or must also undertake other duties. How, for instance, are foreign applications for assistance to be treated when they relate to verifications and enquiries not provided for under national legislation ?

These difficulties have recently led to the adoption of an amended and, at first sight, more comprehensive general clause specifying that the authorities must make all the enquiries necessary for the elucidation of the facts.

This solution has been adopted in the treaties between Germany and Austria (Article 4, No. 1), Germany and Poland (Article 7, No. 4), Germany and Czechoslovakia (Article 6, No. 3), Germany and Yugoslavia (Article 7, No. 2), Austria and Czechoslovakia (Article 4), Austria and Yugoslavia (Article 4, No. 1).

But although this provision is adequate when it is a question of elucidating doubtful facts, it fails to cover cases in which, the facts being clear, specific legal formalities must be performed. In such cases it is still ambiguous whether assistance is to be granted in accordance with the legislation of the country applying for it or with that of the country which is to provide it.

Hence most treaties contain, besides the general clause, a detailed list of the legal formalities in respect of which administrative assistance may or must be given. Several treaties, for example, that between Belgium and Poland (miners, Article 26), omit the general clause entirely and simply specify the various circumstances which may give rise to a demand for assistance. The question then arises whether the list is intended to be exhaustive or merely illustrative. This depends on the wording and context of the relevant provisions.

A few of the important circumstances giving rise to administrative assistance are mentioned below by way of example.

In the first place, administrative assistance is required primarily in connection with compulsory notifications. Several treaties provide that the liability to make compulsory notifications under the national legislation of one State may be complied with by notifying the insurance institution of the other. This is expressly specified in the treaties between Germany and Poland (Article 7,

No. 3), Germany and Yugoslavia (Article 6, No. 2), and Austria and Yugoslavia (Article 6, No. 1).

Administrative assistance may also be demanded for the purpose of collecting arrears of contributions, as provided for in the treaty between Germany and France (first supplementary agreement, Article 3). But as a rule the recovery of arrears of contributions falls within the competence of the judicial authorities and is therefore treated in the next section.

A few treaties provide that contributions paid to an insurance carrier of one country on behalf of that of the other must be transferred to the second institution within a specified time. In such cases, to prevent any injury to the insured person's interests, the contributions are deemed to have been paid directly to the competent institution. This solution is adopted in the treaties between Germany and France (first supplementary agreement, Article 5), Germany and Poland (Article 9) and Germany and Yugoslavia (Article 9).

Methods of Assistance

As a rule administrative assistance is granted on application from the authorities which require it. It may, however, also be provided by the competent authorities of the other contracting country without such application when certain specified circumstances arise. When it is simply a matter of notification by the authorities of one country to those of the other of certain circumstances, such as the migration from one country to the other of insured persons or persons entitled to benefit, the act of notification is sufficient in itself to ensure that assistance is given. The supervision of pensioners may also be effected without special application from the insurance institution responsible for the payment of benefit, while some more recent treaties even lay down a general provision empowering the authorities in doubtful or urgent cases to take, *ex officio*, any steps necessary for the elucidation of the facts. This is provided under the treaties between Germany and Austria (Article 4, No. 1), Germany and Czechoslovakia (Article 6, No. 3), Germany and Yugoslavia (Article 7, No. 2), Austria and Czechoslovakia (Article 4, No. 1), and Austria and Yugoslavia (Article 4, No. 1); but the German and Austrian treaties with Czechoslovakia restrict the assistance of the foreign authorities to such measures as may be provided for under the national legislation of each country. Other treaties, e.g. that between France and Germany (first supplementary agreement,

Article 2, No. 2), provide for *ex officio* intervention if it is required in the interests of the corresponding insurance carrier of the other country.

On the other hand, assistance in the recovery of arrears of contributions, and normally also in the supervision of pensioners and the carrying out of medical examinations, is provided only on the application of the foreign insurance institution concerned. This is so under the treaties between Germany and France (first supplementary agreement, Article 2, No. 1), Germany and Yugoslavia (Article 6, No. 1), Austria and Czechoslovakia (Article 4, No. 1), and Austria and Yugoslavia (Article 4, No. 1).

A factor of great importance for the satisfactory operation of administrative assistance is the provision for direct communication between the authorities concerned. The principle that the authorities of two States may not communicate with each other otherwise than through their diplomatic representatives is modified by an agreement to allow the higher administrative authorities specified in the treaty, or even subsidiary insurance carriers and administrative authorities, to correspond directly with the equivalent institutions in the other contracting country.

Direct communication between the supreme administrative authorities specified in the treaty, without recourse to diplomatic channels, is provided for by the treaty between Germany and France (first supplementary agreement, Articles 3 and 6). Under those between Germany and Austria (Article 31) and Germany and Czechoslovakia (Article 27, No. 1) the authorities concerned may communicate with each other directly; but the latter provides that, if for special reasons direct communication is impracticable, recourse may be had to the consular authorities competent for the locality of the institution requiring assistance. A similar clause occurs in the treaty between Austria and Czechoslovakia (Article 34, No. 2). The principle of direct communication is also laid down in the treaties between Germany and Yugoslavia (Article 36), Austria and Yugoslavia (Article 36), Belgium and the Netherlands (Article 6, No. 2), Belgium and Poland (miners, Article 26), and Italy and Yugoslavia (Article 29).

When the languages of the two countries are different, valuable facilities are also granted in respect of the use of languages. Here two possibilities are open. Sometimes it is agreed to use one of the languages current in the contracting countries; in this case the language chosen is, for practical reasons, naturally that which is the more widely known and which may thus reasonably be

assumed to be understood in the other country also. Thus the treaties between Belgium and Poland (miners, Article 26, No. 2) and France and Poland (miners, Article 33, No. 2) prescribe the use of French. The alternative solution is to place the two languages on the same footing. Communications between the insurance institutions and administrative authorities of one State and the nationals of the other are then couched in the official language of the former; but they must be accompanied by a translation into the official language of the second State unless the communication is a decision on an application sent in the official language of the first. For the rest translations must be appended wherever possible to all communications addressed to nationals of the second State resident abroad. In order to facilitate the application of this provision it is also sometimes provided that, when the competent bodies are unable to provide the translation of a document or award owing to ignorance of the language, the two supreme authorities shall undertake to supply such translation on request. This provision appears in the treaties between Germany and Poland (Article 12, No. 3), Germany and Yugoslavia (Article 12, No 2), and Austria and Yugoslavia (Article 8, No. 2).

Applications from nationals of one State to the insurance carriers and administrative authorities of the other may not be rejected because they are drawn up in the language of the former. This is provided under the treaties between Germany and France (Article 11), Germany and Poland (Article 12, No. 1), Austria and Yugoslavia (Article 8, No. 1), Spain and France (Article 13), and France and Italy (Article 13).

Failing any special provisions concerning the use of a particular language, the national regulations governing the official language apply.

Several treaties allow exemption from the visa or certificate of the consular or diplomatic authorities in respect of all deeds, documents and other papers required for the administration of their provisions. If a visa is nevertheless held to be desirable, it must be supplied free of charge. This is provided in the treaties between Germany and France (Article 13, No. 2), Belgium and Poland (miners, Article 25), Spain and France (Article 15, No. 2), France and Italy (Article 15, No. 2), and France and Poland (miners, Article 32).

Relief in respect of taxes and dues also plays an important part in the administration of social insurance, taking the form of exemption from stamp duty and other charges, fees, etc. The exemptions

or relief granted in respect of stamp duties and legal charges in one country then apply equally to the administration of the social insurance of the other. Other treaties provide instead that the exemptions allowed under the legislation of one country in respect of documents submitted to social insurance institutions or authorities shall also apply to similar documents submitted for the purpose of administering the treaty to the competent institutions or authorities of the other country.

Fiscal relief as described above is granted under the following treaties: Germany-Austria (Article 7), Germany-France (Article 13, No. 1), ermany-Poland (Article 14), Germany-Czechoslovakia (Article 11), Germany-Yugoslavia (Article 14), Austria-Czechoslovakia (Article 10), Austria-Yugoslavia (Article 9), Spain-France (Article 15, No. 1), France-Italy (Article 15, No. 1), France-Poland (miners, Article 31), Italy-Yugoslavia (Article 37).

Finally, something must also be said of the provisions dealing with the payment of the expenses arising out of administrative assistance.

When it can be assumed that the expenses incurred on both sides will be roughly equal, administrative assistance may be furnished without liability for the reimbursement of its costs. This is the arrangement under the treaty between Italy and Yugoslavia (Article 26, No. 3).

More often, however, it is agreed that the cost of assistance shall be repayable within limits variously defined in the treaties. According to the treaties between Germany and France (first supplementary agreement, Article 4, No. 1) reimbursement must be effected up to the actual amount of the expenditure. Other treaties provide that expenses shall be repaid to the same extent as under the country's own insurance regulations: this is the case in the treaties between Germany and Czechoslovakia (Article 6, No. 4) and Germany and Yugoslavia (Article 7, No. 3). Finally, under some treaties the reimbursement of the cost of assistance is governed by the general regulations of the country to which the institution providing assistance belongs. The latter solution is adopted in the treaties between Germany and Austria (Article 5, No. 1), Germany and Poland (Article 7, Nos. 2 and 5), Austria and Czechoslovakia (Article 6, No. 1), and Austria and Yugoslavia (Article 5, No. 1).

Unless otherwise agreed between the authorities concerned, claims for reimbursement fall due on the date of the termination of the official proceedings on which the expenditure was incurred.

This is provided under the treaties between Germany and Austria (Article 5, No. 2), Germany and France (first supplementary agreement, Article 4, No. 2), Germany and Poland (Article 8), Germany and Czechoslovakia (Article 7), Germany and Yugoslavia (Article 8), Austria and Czechoslovakia (Article 6, No. 2), and Austria and Yugoslavia (Article 5, No. 2).

The time limit for payment is fixed at one month by the treaties between Germany and Austria (Article 5, No. 2), Germany and France (first supplementary agreement, Article 4, No. 2), Germany and Poland (Article 8), Germany and Czechoslovakia (Article 7), Germany and Yugoslavia (Article 8), Austria and Czechoslovakia (Article 6, No. 2), Austria and Yugoslavia (Article 5, No. 2).

Under the following treaties claims for reimbursement must be paid in the currency in which the expenditure was incurred: Germany-Austria (Article 5, No. 2), Germany-France (first supplementary agreement, Article 4, No. 2), Germany-Poland (Article 8), Germany-Czechoslovakia (Article 7), Germany-Yugoslavia (Article 8), Austria-Czechoslovakia (Article 6, No. 2), Austria-Yugoslavia (Article 5, No. 2).

In case of delay, interest is prescribed from the date on which payment became due at the rate of 6 per cent. in those between Germany and Austria (Article 5, No. 2), Germany and Yugoslavia (Article 8), and Austria and Yugoslavia (Article 5, No. 2), 5 per cent. in the first supplementary agreement made in pursuance of the treaty between Germany and France (Article 4, No. 2), and 4 per cent. in the treaties between Germany and Poland (Article 8), Germany and Czechoslovakia (Article 7), and Austria and Czechoslovakia (Article 6, No. 2).

§ 2. — Mutual Legal Assistance

Bodies Affording Assistance

The administration of social insurance sometimes gives rise to disputes which must be settled by independent bodies not bound by the instructions of a higher authority, that is, by courts of law. The authorities for the settlement of social insurance disputes may be either the ordinary courts or special social insurance courts. The latter again may be subdivided into permanent insurance courts and arbitration boards.

The judicial authorities responsible for the settlement of social insurance disputes may sometimes find themselves in need of the

assistance of similar authorities abroad. Under treaties which also provide for the exchange of legal assistance, the latter may be demanded from any judicial authorities engaged in the settlement of social insurance disputes. As a rule, no distinction is made between the ordinary courts and special insurance courts.

Legal assistance is provided for by the treaties concluded by Germany with Austria (Article 4, No. 1), Poland (Article 7, No. 1), Czechoslovakia (Article 6, No. 1), and Yugoslavia (Article 7), and also by the Austrian treaties with Czechoslovakia (Article 5) and Yugoslavia (Article 4).

Nature of Assistance

Leaving aside for later discussion the method sometimes adopted of referring to the general agreement for legal assistance in force between the two countries, the circumstances giving rise to legal assistance may, as in the case of administrative assistance, be defined in the treaties in either of two ways.

Treaties laying down their own provisions for legal assistance may define the circumstances which it covers either by a general clause, or by an illustrative or exhaustive list. The system of a general clause gives rise to the same problems as have already been discussed in connection with administrative assistance. This method is adopted in the treaties between Germany and Austria (Article 4, No. 1), Germany and Poland (Article 7, No. 1), Germany and Czechoslovakia (Article 6, No. 1), Germany and Yugoslavia (Article 7, No. 1, and Article 6, No. 1), Austria and Czechoslovakia (Article 4), and Austria and Yugoslavia (Article 4, No. 1).

A few examples of the particular circumstances giving rise to legal assistance are given below.

Insurance institutions may, for instance, be granted certain privileges in respect of distraint, bankruptcy and settlement proceedings. In such cases the claims of the insurance carriers of each country for arrears of contributions enjoy the same privileges in distraint, bankruptcy and composition (settlement) proceedings in the other country as corresponding claims of the latter's insurance carriers. This is so under the treaties between Germany and Austria (Article 4, No. 4), Austria and Czechoslovakia (Article 5, No. 2), and Austria and Yugoslavia (Article 4, No. 4).

Again, in order to protect the insured person against the consequences of prescription, the time limit for the lodging of appeals is deemed to have been observed if appeal is made within the specified

time to an authority competent to receive appeals under the insurance legislation of the other country. The application must then be transmitted immediately to the supreme authority specified in the treaty, or may be communicated directly to the body competent to deal with it. Provision to this effect is laid down in the treaties between Germany and France (Article 12 and first supplementary agreement, Article 6), Germany and Poland (Article 13), Germany and Czechoslovakia (Article 10), Germany and Yugoslavia (Article 13), Austria and Czechoslovakia (Article 9), Austria and Yugoslavia (Article 6, No. 2).

Several treaties also lay down provisions for the execution of the claims for contributions of the insurance carriers. Many of them stipulate that the enforceable decisions of the courts (orders for payment, returns of arrears) concerning the recovery of contributions and other claims arising out of insurance shall be placed on the same footing, provided that the enforceable decisions of the higher administrative authorities of the country to which the insurance carrier belongs are marked " Issued for the purpose of enforceable execution " and signed and sealed. This is provided by the treaties between Austria and Czechoslovakia (Article 5, No. 1) and Austria and Yugoslavia (Article 4, No. 3).

Reference to general agreements concerning legal assistance is found in the treaties between Germany and Austria (Article 4, No. 3) and Austria and Yugoslavia (Article 4, No. 3). Under those between Germany and Czechoslovakia (Article 6, No. 5) and Austria and Czechoslovakia (Article 5, No. 1) the ordinary courts are required to furnish legal assistance in administering the branches of social insurance covered by the treaty to the same extent as in civil and administrative matters.

Methods of Assistance

The practical problems connected with legal assistance are in general the same as those connected with administrative assistance as described above, but there are a few problems which are peculiar to legal assistance, and these are dealt with particularly below.

In a number of treaties special facilities are provided in respect of proceedings before the authorities of the contracting countries. Such facilities also apply to dealings with the administrative authorities, but are of special importance in respect of legal proceedings.

To overcome the difficulties which may handicap an insured

person or claimant who is ignorant of the foreign language and foreign procedure, it is often provided that such persons may be represented by the consular authorities. The consuls of both States are then empowered, without special authorisation, to represent their own nationals before the social insurance courts of the other country, and enjoy the same rights in respect of such procedure as the parties themselves. The consular authorities are given this power of representation by the treaties between Germany and Poland (Article 11, No. 1), Germany and Yugoslavia (Article 11), and Austria and Yugoslavia (Article 7).

When, as frequently happens, the rules of procedure lay down that the services of legal counsel shall be compulsory in proceedings before specified authorities, in particular before the higher courts, with a view to ensuring the efficient conduct of the case, this requirement is not affected by the treaty. This applies to the treaties between Germany and Czechoslovakia (Article 8, No. 1) and Austria and Czechoslovakia (Article 7, No. 1).

Direct communication between the courts of the two contracting countries is provided for, as in the case of administrative assistance, under the treaties between Germany and France (first supplementary agreement, Article 31, No. 1), Germany and Poland (Article 45, No. 1), Germany and Czechoslovakia (Article 27, No. 1), Germany and Yugoslavia (Article 36), Austria and Czechoslovakia (Article 34), and Austria and Yugoslavia (Article 36).

The provisions governing the reimbursement of expenditure incurred on administrative assistance also apply to legal assistance under the treaties between Germany and Austria (Article 5, No. 1), Germany and Czechoslovakia (Article 7), Germany and Yugoslavia (Article 8), Austria and Czechoslovakia (Article 6), and Austria and Yugoslavia (Article 5).

Similarly, the language facilities granted in respect of administrative procedure are extended to legal assistance in the treaties between Germany and France (Article 11), Germany and Poland (Article 12 and Article 45, No. 2), Germany and Yugoslavia (Article 12), and Austria and Yugoslavia (Article 8).

Finally, fiscal relief is also allowed in the same way as for administrative assistance by the treaties between Germany and Austria (Article 7), Germany and France (Article 13), Germany and Poland (Article 14), Germany and Czechoslovakia (Article 11), Germany and Yugoslavia (Article 14), Austria and Czechoslovakia (Article 10), and Austria and Yugoslavia (Article 9).

§ 3. — Mutual Assistance in Application of Migrants' Insurance

Application for Benefit

The insurance institutions responsible for awarding benefit to a migrant worker who has lodged a claim are those of the various countries in which he acquired his rights.

In this connection, the question arises whether the claimant must apply separately to each insurance institution or may lodge his claim with one institution only.

Failing any special provisions, an insured person who has been insured successively in several countries and is entitled to benefit under the schemes of these countries must make application to all the institutions on which he has a claim. The claimant must notify each institution whether he has simultaneously applied for, or is already drawing, benefits from a foreign insurance institution, so that the various institutions may communicate with each other as regards the fixing and payment of benefit under the bilateral arrangements for migrants' insurance.

There is, however, another and simpler method, whereby the claimant may make his application to one institution only, which is then responsible for getting into touch with the competent foreign institution.

Under the treaty between Germany and France (first supplementary agreement, Article 25), application for cash benefit must be made to one of the insurance institutions to which the insured person has belonged or to a body competent to receive such application. It is then held to have been made to all the competent insurance institutions on the date on which it was received by the first. It must be accompanied by the documents and certificates required under the various insurance schemes to which the insured person has belonged. Under the treaty between Belgium and Poland (miners, Article 19) claimants are required to submit their application in duplicate to the competent insurance institution of the country in which they were last employed. If this is not the country of residence, the application may be transmitted to the competent insurance institution through the institution of the country of residence. The treaty between France and Poland (miners, Article 24) also provides that applications must be submitted in duplicate to the competent insurance carrier of the country in which the claimant was last employed, or the competent organisation of his country of residence, together with the papers

and documentary evidence required under both French and Polish legislation. The statutory time limits are deemed to have been observed if the claimants lodged their applications with an insurance institution of the other State in due time.

Exchange of Information Concerning Awards

Under most treaties the insurance institution of the other contracting country is given the opportunity of expressing an opinion before a definitive award is made in accordance with the bilateral arrangements for migrants' insurance.

For instance, the competent insurance institutions are required to come to an agreement as to the procedure to be followed for the award of pensions, and also sometimes to transmit the relevant documentary evidence to each other on the receipt of pension claims. The institutions must also come to an agreement in the case of a review of claims or the granting of optional benefits, in particular, curative treatment.

The exchange of information with regard to the award of benefit is compulsory under the following treaties: Germany-Austria (Article 21), Germany-France (first supplementary agreement, Article 26, No. 3), Germany-Poland (Article 30, No. 1), Germany-Czechoslovakia (Article 22), Germany-Yugoslavia (Article 29, No. 1), Austria-Czechoslovakia (Article 23), Austria-Yugoslavia (Article 22), Belgium-Poland (miners, Article 20), France-Poland (miners, Article 25, No. 3).

Verification of Conditions of Benefit and Investigation of Claims

Before insurance benefits can be awarded, it must be ascertained whether the claimant fulfils the required conditions. Under bilateral arrangements for migrants' insurance the claimant is by definition resident abroad, in relation to one of the insurance institutions concerned. In verifying the right to benefit of claimants resident abroad the home insurance institution will therefore frequently find itself obliged to call on the assistance of the foreign institution; hence, most treaties stipulate that administrative assistance between the insurance institutions shall include the undertaking of medical examinations.

If benefit is awarded, each insurance institution must issue an award according to its own regulations. No provision is made under bilateral insurance treaties for the issue of joint awards by the institutions concerned. The award may be notified directly to

the claimant or, when application may be made to a single institution, transmitted to him through the institution with which his application was lodged.

As the investigation of claims, except as far as the totalisation of insurance periods is concerned, is conducted exclusively according to national legislation, disputes arising in this connection are also governed by national regulations as regards both law and procedure.

The insurance institutions of the contracting countries are made responsible for verifying the rights of claimants and undertaking medical examinations under the treaties between Germany and Austria (Article 4, No. 1), Germany and Poland (Article 7, No. 2), Germany and Czechoslovakia (Article 5), Germany and Yugoslavia (Article 6, No. 1), Austria and Czechoslovakia (Article 4, No. 1), Austria and Yugoslavia (Article 4, No. 1), and Italy and Yugoslavia (Article 26).

The issue of separate awards by the different insurance institutions concerned is expressly prescribed in the treaties between Germany and Austria (Article 21), Germany and France (first supplementary agreement, Article 26), Germany and Poland (Article 30, No. 1), Germany and Czechoslovakia (Article 22), Germany and Yugoslavia (Article 29, No. 1), Austria and Czechoslovakia (Article 23), Austria and Yugoslavia (Article 22), Belgium and Poland (miners, Article 21), France and Poland (miners, Article 26).

Finally, the provision that the procedure for the settlement of disputes shall be governed by national law is expressly stated in the treaties between Belgium and Poland (miners, Article 22) and France and Poland (miners, Article 27), but is tacitly understood in all other treaties also.

§ 4. — Mutual Assistance in Payment of Pensions Abroad

The following paragraphs discuss the problems of mutual assistance arising out of the fact that the claimant is resident abroad.

Compliance with Formalities Prescribed by National Regulations through Foreign Institutions or Authorities

A pensioner has, from time to time, to comply with certain formalities prescribed by the legislation of his country and to

supply the insurance institution or authority responsible for social insurance with various particulars.

Information may be required, for instance, as to whether an orphan in receipt of an orphan's pension is still attending school, when this is a condition for the payment of the pension. Again a widow entitled to a pension may have to prove that she has not remarried; in this case the authorities responsible for the registration of marriages, births and deaths are required to furnish the necessary particulars.

It is often difficult, however, for a beneficiary resident abroad to supply such information or certificate to the insurance institution from which he draws his pension, and his task would be easier if he could submit these documents to the insurance institution for the locality in which he lives. Hence, social insurance treaties sometimes provide that notifications compulsory under the national legislation of one country may be legally submitted to an insurance institution of the other.

This provision is found in the treaties between Germany and Poland (Article 7, No. 3), Germany and Yugoslavia (Article 6, No. 2), and Austria and Yugoslavia (Article 6, No. 1).

Verification of Continuance of Right to Benefit

As a rule the bodies responsible for paying insurance benefits are required *ex officio* to ascertain whether the conditions for the award of benefit are still fulfilled. Thus they may have to investigate whether the condition of an invalid has not improved sufficiently to justify the withdrawal of the pension.

In order to ensure effective supervision in this respect the treaties often provide that the insurance carriers shall as far as possible keep each other informed of the movements of insured persons or pensioners from one country to the other.

The institutions may also undertake to verify the continuance of the right to benefit of persons in receipt of benefit from an insurance institution of the other country. Here again, the carrying out of medical examinations is usually prescribed as part of the administrative assistance due from one institution to the other. An invalid pensioner who does not comply with the obligation of submitting himself for periodical examination by the insurance institution of the country in which he is resident may have his pension withdrawn.

Mutual notification of the movements of insured persons or

pensioners is prescribed by the treaties between Germany and Austria (Article 30), Germany and France (first supplementary agreement, Article 31, No. 2), Germany and Yugoslavia (Article 34), Austria and Czechoslovakia (Article 30), and Austria and Yugoslavia (Article 32).

The duty of verifying the continuance of the conditions for the receipt of benefit is prescribed by the treaties between Germany and Austria (Article 4, No. 1), Germany and Poland (Article 7, No. 2), Germany and Czechoslovakia (Article 5), Germany and Yugoslavia (Article 6, No. 1), Austria and Czechoslovakia (Article 4, No. 1), Austria and Yugoslavia (Article 4, No. 1), and Italy and Yugoslavia (Article 26).

Under the treaty between France and Belgium (miners, Article 12, No. 3), the monthly invalidity allowances provided for by French legislation cease to be payable to workers of Belgian nationality if they fail to present themselves at least once every six months for examination by a medical practitioner appointed by the mutual benefit societies of which they were last members. The French Autonomous Pension Fund on the one hand and the Belgian National Miners' Pension Fund on the other reserve the right to have workers in receipt of invalidity allowances examined by a medical practitioner chosen by themselves. Similar provisions are laid down by the treaty between France and Poland (miners, Article 9, No. 2).

Payment of Benefit through Insurance Institution of Place of Residence

In order to effect the economy in administration made possible by centralising the payment of small pensions in the hands of a single body, it is often provided that current benefits may be paid by the insurance institution of the locality in which the claimant is resident, such sums being reimbursed by the other institution as it is liable for. This device may be resorted to not only where a person is entitled to pensions under the schemes of both countries, but also where he is a pensioner under the scheme of one country only but resides in the other.

Provision to this effect is made in the treaties between Germany and Austria (Article 23), Germany and Czechoslovakia (Article 23), Austria and Czechoslovakia (Article 25), Austria and Yugoslavia (Article 24), and Italy and Yugoslavia (Article 20).

CHAPTER III

SETTLEMENT OF DISPUTES BETWEEN STATES

The administration of social insurance may sometimes lead to disputes between the insured persons or claimants to benefit and the insurance institution. Such disputes are naturally settled in conformity with the national legislation of the country to which the insurance institution belongs, even if they arose in connection with the application of a social insurance treaty.

But disputes in connection with social insurance treaties may also arise between the insurance carriers and authorities of one country and those of the other. Thus the administrative authorities of the two countries may disagree as to the amount of the reimbursement due on account of assistance rendered. In such cases, if the insurance carriers or authorities concerned are unable to reach agreement, the dispute is usually referred to the supreme administrative authorities of the two countries, who settle it directly between themselves.

Finally, disputes arising out of the application of social insurance treaties may also occur between the supreme administrative authorities themselves, e.g. in connection with the interpretation of the treaty.

In both the latter cases the dispute is one between the two contracting countries arising out of the application of social insurance treaties.

If the authorities concerned cannot reach agreement, special machinery and procedure is necessary to settle the dispute and give a binding decision on the point of law involved. In such cases countries may choose either of the two methods provided under international law for the settlement of disputes between States. The first method, that of friendly agreement, is discussed in the first part of this chapter. The second part deals with arbitration procedure for the settlement of social insurance disputes, which may take the form of decision either by a special court set up for social insurance disputes or by the ordinary machinery established

for the settlement of differences arising in the course of international relations.

§ 1. — Settlement of Disputes by Friendly Agreement

Before resorting to formal proceedings for the settlement of disputes, the parties concerned may always try to reach a settlement by friendly agreement, even when this is not expressly provided in the treaty. Many treaties, however, expressly stipulate that in case of dispute arising between the two contracting countries out of the administration of social insurance treaties a settlement must first be sought through friendly agreement.

There are two ways in which this method may be applied.

In the first place, under general international law the relations between two countries are usually conducted through diplomatic channels, that is to say, by their respective foreign ministries. This method may also be adopted in the case of social insurance treaties, either expressly, by specifying the foreign offices as the competent authorities, or tacitly, by omitting to appoint other special bodies.

The second method consists in providing for the settlement of disputes by the responsible ministries, that is, primarily by the supreme administrative authorities for social insurance. The need for expert knowledge of the subject, which points to the responsible ministry as the most competent authority, and the desirability of expediting the settlement of disputes, have led to the adoption of this second method in the majority of treaties. No independent authorities are set up for the settlement of the dispute; but the administrative authorities concerned conduct written negotiations with a view to settling their difference by friendly agreement. Most treaties thus leave the settlement of disputes to the joint decision of the supreme administrative authorities.

If these negotiations, which really represent a simplified form of friendly settlement procedure, should fail to produce agreement, recourse must be had to a special body for the settlement of disputes as described in the following paragraphs.

The settlement of disputes through ordinary diplomatic channels is prescribed in the treaty between France and Poland (general, Article 15, No. 5).

The method of leaving the supreme administrative authorities of the countries concerned to settle disputes by direct negotiation

is adopted by the treaties between Germany and Austria (Article 27, No. 1), Germany and France (Article 18, No. 1), Germany and Poland (Article 47, No. 1), Germany and Czechoslovakia (Article 30), Austria and Czechoslovakia (Article 31), Austria and Yugoslavia (Article 33, No. 1), Belgium and France (miners, Article 15), Belgium and Poland (miners, Article 30), Spain and France (Article 20, No. 1), France and Italy (Article 20, No. 1), France and Poland (miners, Article 37).

§ 2. — Settlement of Disputes by Arbitration

Appointment and Composition of Arbitration Courts

If the parties have failed to reach a settlement by friendly agreement, either through diplomatic channels or by direct negotiation between the supreme administrative authorities, most social insurance treaties provide for the institution of arbitration proceedings.

The treaties may themselves define the body competent to conduct such proceedings, together with the method of its appointment and its composition.

On the other hand, a number of treaties provide no special machinery for the settlement of disputes, referring them to the general arbitration procedure in force between the two countries. This method may also be prescribed by specific provisions for the settlement of disputes arising out of the application of social insurance treaties.

The bodies entrusted with the settlement of disputes may be either permanent, or temporary bodies set up for each case as it occurs. Those treaties which do not simply refer disputes to the existing arbitration machinery for disputes between the two States usually provide for the setting up of *ad hoc* bodies as occasion arises.

Generally speaking, the arbitration courts, whether permanent or *ad hoc*, are joint bodies composed of one or two representatives of each of the parties and an independent chairman chosen by them who, as a rule, must not belong to either of the countries concerned. If the parties or their representatives are unable to agree on the choice of a chairman, provision is sometimes made for his appointment by a neutral, or the two States may agree beforehand on the appointment for a certain period of a person to act as independent chairman in any dispute which may arise.

No special procedure, following the direct negotiations between the supreme administrative authorities, is provided for by the treaties between Germany and Austria (Article 27) and Austria and Yugoslavia (Article 33). In both these cases, however, the countries concerned are bound by the optional clause of the Statute of the Permanent Court of International Justice, under which the jurisdiction of the Court extends to disputes arising out of the interpretation of treaties. Hence any disputes arising between these countries out of the application of social insurance treaties are subject to the jurisdiction of the Permanent Court.

A special body for the settlement of disputes arising out of the application of social insurance treaties is provided for by the treaties between Germany and France (Article 18, No. 2), Germany and Poland (Article 47, No. 1), Austria and France (Article 21, No. 6), Belgium and France (miners, Article 15), Belgium and Poland (miners, Article 30), Spain and France (Article 20, No. 2), France and Italy (Article 20, No. 2), France and Poland (general, Article 15, No. 6; miners, Article 37), Italy and Yugoslavia (Article 41, No. 1).

On the other hand, the settlement of these disputes is entrusted to the general judicial authorities agreed upon between the two States under the treaties between Germany and Czechoslovakia, and Austria and Czechoslovakia. The former provides (Article 30) that, failing agreement between the supreme administrative authorities, disputes must be referred to the general arbitration machinery prescribed by the Arbitration and Conciliation Treaty concluded between the two countries on 15 October 1925, which provides that recourse shall first be had to a conciliation committee set up under its provisions, and in the event of its failure, either to the Permanent Court of International Justice or to an arbitration court as defined by the Hague Convention of 18 October 1907. Under the treaty between Austria and Czechoslovakia, also, proceedings subsequent to the failure of negotiations between the administrative authorities are regulated by the Arbitration and Conciliation Treaty of 5 March 1926, which again provides that the case shall first be referred to a Permanent Conciliation Committee and then to the Permanent Court of International Justice or an arbitration court as defined by the Hague Convention of 18 October 1907. This group of treaties must also be held to include those between Germany and Yugoslavia, and Belgium and the Netherlands, which contain no special provision for the settlement of disputes.

The following treaties provide for the setting up of an *ad hoc* body for the settlement of disputes as they arise: Germany-France (Article 18, No. 2), Germany-Poland (Article 47, No. 3), Spain-France (Article 20, No. 2), France-Italy (Article 20, No. 2), France-Poland (general, Article 15, No. 6), Italy-Yugoslavia (Article 41, No. 2).

A joint body for the settlement of disputes under an independent chairman is prescribed by the treaties between Germany and Poland (Article 47, No. 3), Belgium and Poland (miners, Article 30), and France and Poland (miners, Article 37). Failing agreement as to the choice of an independent chairman, the treaty between Germany and Poland (Article 47, No. 4) provides that the choice shall lie with the President of the Swiss Confederation, while that between Belgium and Poland (miners, Article 30) provides that in such cases the chairman shall be chosen by the Director of the International Labour Office at the request of either party. The same provision is laid down by the treaty on miners' pensions between France and Poland (Article 37). Under the treaty between Italy and Yugoslavia (Article 41, No. 3), the contracting countries reserve the right to appoint beforehand, by mutual agreement and for a specified term, a person to act as a third arbitrator in case of dispute.

Competence of Arbitration Court and Legislation Applicable

As a rule the arbitration bodies are competent to decide all international disputes arising out of the application of social insurance treaties.

The courts lay down their own rules of procedure.

According to the treaty between France and Poland (Article 15) either party may, for purposes of information, present a statement of opinion from an international office or organisation competent to deal with the matter. Such opinions may also be required for the same purpose by agreement between the arbitrators.

Most treaties define the legal principles on which the arbitration court is required to base its decision. Several of them, indeed, contain a clause which practically empowers the arbitrators to lay down the law. In the absence of express legal provisions they are required to settle the dispute before them "in conformity with the fundamental principles and the spirit" of the social insurance treaty concerned, while several also refer to the general principles

of law and equity, which in this connection is equivalent to reference to the fundamental principles of social insurance.

These clauses thus provide for the amplification of legal principles. As this is a task which can be properly undertaken only by persons with an expert knowledge of social insurance, special arbitration courts are usually prescribed for the settlement of social insurance disputes, even when there is already a general arbitration treaty in force between the countries concerned or when they are bound by the optional clause of the Statute of the Permanent Court of International Justice.

A clause providing that the special arbitration court shall lay down its own rules of procedure is contained in the treaties between Germany and Poland (Article 47, No. 7) and Belgium and Poland (miners, Article 30). The procedure must be conducted according to the principles laid down by the Hague Convention of 18 October 1907 concerning the peaceful settlement of international disputes, a specific provision to this effect being laid down by the treaty between Germany and Poland (Article 47, No. 7).

Provision for the settlement of disputes in conformity with the treaty and, failing express provisions, in conformity with the fundamental principles and the spirit thereof, is contained in the treaties between Germany and France (Article 18, No. 3), Austria and France (Article 21, No. 6), Belgium and France (miners, Article 15), Spain and France (Article 20, No. 2), France and Italy (Article 20, No. 2), France and Poland (general, Article 15, No. 6; miners, Article 37). The treaty between Germany and Poland (Article 47, No. 2) also refers to the general principles of law and equity.

Binding Force of Arbitration Awards

When arbitration procedure is instituted, all national proceedings in connection with the case must be stayed. This provision is intended to prevent the forestalling of the arbitration award, which might place its binding force in question.

Final decisions of the arbitration courts are binding on the insurance institutions, authorities and courts of the countries concerned and also on individuals.

The expenses of arbitration procedure are shared equally between the two countries as regards the general expenses and the remuneration of the chairman, while each State pays the expenses of its own representatives on the court.

As the decisions of arbitration courts are usually final, there is no possibility of appeal from the special bodies set up by social insurance treaties to the general arbitration or conciliation machinery existing between the two States, nor to the Permanent Court of International Justice in the case of countries bound by the optional clause of the Statute. The special procedure is not a preliminary to general procedure, and thus no appeal can be made from the former to the latter.

Express provision that all national proceedings shall be stayed when international arbitration proceedings have been instituted is contained in the treaties between Germany and Austria (Article 27, No. 2), Germany and France (first supplementary agreement, Article 32, No. 2), Germany and Poland (Article 47, No. 9) and Austria and Yugoslavia (Article 33, No. 2). The final decisions of the arbitration courts are declared to be binding on the insurance institutions, authorities and courts of the countries concerned and also on the interested parties by the treaties between Germany and Austria (Article 27, No. 2), Germany and Poland (Article 47, No. 8), and Austria and Yugoslavia (Article 33, No. 2).

The treaty between Germany and Poland (Article 47, No. 10) contains provision for the payment of the expenses of arbitration proceeding in accordance with the principles described above.

CHAPTER IV

EXPIRY OF TREATIES

It now remains to consider the conditions governing the expiry of social insurance treaties and the consequences of their expiry.

The first section of the chapter deals with the clauses of the treaties themselves regarding their termination by denunciation or non-renewal. The second and third analyse respectively the effects of the treaty's expiry on pension rights in course of acquisition and on acquired rights.

§ 1. — Termination of Treaties by Denunciation or Non-Renewal

As a rule social insurance treaties are not concluded for a prearranged period of long duration. The various reasons—social, economic or financial—which led to their conclusion may be modified by the course of time and may appear under a fresh aspect after a certain period has elapsed. The scope of the insurance schemes to which the treaty applies may be extended in one or both countries and the benefit scheme be revised in divers ways. New occupational schemes may be introduced by one or other of the contracting States, giving rise to problems for which the treaty provides no solution. Hence most international agreements in the domain of social insurance include clauses providing for their termination at comparatively short notice. The validity of a treaty in force is not, however, affected by any amendments to the national legislation of the contracting countries. These may give rise to the denunciation of the treaty, but they do not automatically invalidate it.

Treaties are sometimes concluded for a specified period. In this case they expire at the end of the period fixed, but the contracting countries may of course prolong them, either by means of a new agreement or, where the treaty itself so stipulates, by tacit consent. In the latter case the treaty is usually prolonged for a period equal to that of its original validity.

In the case of treaties concluded for an indefinite period formal denunciation is necessary to terminate them. As a rule denunciation is subject to a period of notice specified in the treaty itself, usually three to twelve months. Very often too, notice of the termination of a treaty must be given to take effect at the end of a calendar year, a restriction intended to simplify the settlement of accounts in respect of the payment of pensions and the calculation of insurance periods which remain valid in virtue of the treaty.

The following table shows the period of notice required for the denunciation of bilateral social insurance treaties.

Contracting countries	Period of notice
Germany-Austria (Art. 32, No. 5)	Six months before the end of a calendar year.
Germany-France (Art. 20, No. 1) First supplementary agreement (Art. 35, No 3) . . . Second supplementary agreement (Art. 26, No. 1) . . .	Three months before the expiry of the current period
Germany-Poland (Art. 49, No. 1)	Six months before the end of a calendar year.
Germany-Czechoslovakia (Art. 31, No. 2)	Twelve months before the end of a calendar year.
Germany-Yugoslavia (Art. 40, No. 1)	Six months before the end of a calendar year.
Austria-France (Art. 21, No. 4)	Three months before the expiry of the current period.
Austria-Czechoslovakia (Art. 37)	Twelve months before the end of a calendar year.
Austria-Yugoslavia (Art. 40) . .	Six months before the end of a calendar year.
Belgium-France (miners, Art. 16, No. 4)	Three months before the expiry of the current period.
Belgium-Netherlands (Art. 9, No. 3)	Six months before the expiry of the current period.
Belgium-Poland (miners, Art. 31, No. 2)	Three months before the expiry of the current period.
Spain-France (Art. 22, No. 1) .	Three months before the expiry of the current period.
France-Italy (Art. 22, No. 1) .	Three months before the expiry of the current period.
France-Poland (general, Art. 15, No. 4)	Three months before the expiry of the current period.
France-Poland (miners, Art. 39, No. 3)	Three months before the expiry of the current period.
Italy-Yugoslavia (Art. 40, No. 1)	One year.

A few of these treaties also provide for the possibility of partial denunciation limited to a specified part of the treaty, for instance, the part dealing with miners' pensions. A clause providing for partial denunciation, with the consent of the other contracting country, is contained in the treaties between Germany and Austria (Article 32, No. 5), Germany and Yugoslavia (Article 40, No. 1), Austria and Yugoslavia (Article 40), Italy and Yugoslavia (Article 40, No. 1).

§ 2. — Effects of Expiry of Treaties on Rights in Course of Acquisition

Most of the more recent treaties lay down the principle that the expiry of the treaty shall not affect rights in course of acquisition in virtue of insurance periods preceding the date of expiry. These rights are deemed to be maintained until the date at which the treaty expired, even if the award of a pension takes place after that date.

Thus the rights which a migrant is in course of acquiring in country A when already drawing a pension in country B are maintained until the date of the treaty's expiry by the fact that a pension is drawn in country B. From that date onward, however, this fact is no longer sufficient to maintain the migrant's rights in country A, and he must take steps to maintain his rights in conformity with the legislation of the latter country, either by resuming the payment of contributions or by paying a continuation fee on account of the period subsequent to the treaty's expiry.

In most treaties this rule is framed in the following terms: " A qualification for benefit which is maintained in conformity with the provisions of this treaty shall not lapse on account of the denunciation of the treaty; the further maintenance of such qualification shall be based on national legislation in respect of the period after the treaty has ceased to be operative ". This clause, or a similar one, is contained in the following treaties: Germany-Austria (Article 32, No. 5), Germany-Poland (Article 49, No. 3), Germany-Czechoslovakia (Article 31, No. 2), Germany-Yugoslavia (Article 40, No. 3), Austria-Czechoslovakia (Article 37), Austria-Yugoslavia (Article 40). The same rule is accepted by the treaties between Germany and France (Article 20; first supplementary agreement, Article 35, No. 4; second supplementary agreement, Article 26, No. 2), Spain-France (Article 22, No. 3), France-Italy

(Article 22, No. 3) and the treaties on miners' pensions between Belgium and Poland (Article 31, No. 3) and France and Poland Article 39, No. 4).

§ 3. — Effects of Expiry of Treaties on Acquired Rights.

So far as concerns current pensions, bilateral treaties respect the principle of acquired rights and expressly state that the expiry of the treaty shall not affect the liabilities of insurance institutions arising out of events which occurred while the treaty was in force. In other words, the treaty provisions continue to apply in respect of events which happened before it ceased to be operative. Most of the treaties express this rule as follows: "The liabilities in connection with events giving rise to benefits which occur during the period of operation of the treaty shall continue to be discharged by the insurance carriers which are liable under this treaty in spite of the denunciation". This clause, or a similar one, is contained in the treaties between Germany and Austria (Article 32, No. 5), Germany and France (Article 20, No. 2) Germany and Poland (Article 49, No. 3), Germany and Czechoslovakia (Article 31, No. 2), Germany and Yugoslavia (Article 40, No. 2), Austria and Czechoslovakia (Article 37), Austria and Yugoslavia (Article 40). The treaty concerning miners' pensions between Belgium and Poland provides, under Article 31, No. 3, that in the event of the treaty's denunciation its provisions shall continue to apply to insured persons and their dependants to whom pensions had been awarded previously, and even to those who had made application for a pension under the treaty provisions before the date of denunciation. The treaty between Italy and Yugoslavia (Article 40, No. 2) provides that claims based on pension rights acquired while the treaty was operative must be met in conformity with the treaty provisions until the natural extinction of such rights. The treaties between Spain and France (Article 22, No. 2) and France and Italy (Article 22, No. 2) also continue to apply to acquired rights in the event of denunciation.

Seeing that the principle of acquired rights is generally recognised, it remains to consider whether this principle holds good in cases where the national law of the countries previously bound by the treaty restricts the rights of insured or formerly insured persons resident abroad.

All the treaties which provide for this eventuality prescribe the

scrupulous respect of acquired rights in this case also. Thus, those between Germany and France (Article 20, No. 2), Spain and France (Article 22, No. 2) and France and Italy (Article 22, No. 2) lay down that in the event of the treaty's denunciation its provisions shall continue to apply in respect of acquired rights, in spite of any restrictions on the payment of pensions to persons resident abroad laid down by the schemes concerned.

The treaty between Germany and Poland (Article 49, No. 2), while respecting the principle of acquired rights, at the same time takes into account restrictions imposed by national legislation in respect of the claimant's residence abroad. In the event of the treaty's denunciation its provisions will continue to apply as regards claims arising out of events which occurred before it ceased to be operative, but two years after the treaty expires the provisions of national legislation providing for the suspension of payments to foreigners resident abroad will again become operative in respect of half the amount of pensions awarded on account of events which took place before the treaty came into force.

PART IV

CONCLUSIONS

I. — Establishment of International Scheme for Maintenance of Rights under Invalidity, Old-Age and Widows' and Orphans' Insurance

[1] The wording of the item on the agenda indicates that the subject of the consultation is twofold:

(*a*) The maintenance of rights in course of acquisition;
(*b*) The maintenance of acquired rights.

The maintenance of rights in course of acquisition, which means in effect the maintenance of the validity of contributions, is, under the majority of schemes of invalidity, old-age and widows' and orphans' insurance, an essential condition for entitlement to pension. There exist, it is true, a few schemes under which each contribution is really a single premium which purchases a deferred annuity: here the contributions made in respect of an insured person retain their validity unconditionally and without limit of time. All the other schemes, constituting the majority, lay down for entitlement to invalidity and survivors' pension, and sometimes old-age pension as well, either one or both of the following conditions: qualifying period, and maintenance of rights.

Those schemes which provide for a qualifying period make the right to pension conditional on the payment of a minimum number of contributions either since entry into insurance or during a prescribed period immediately preceding the happening of the event insured against. Where a scheme affords special advantages, such as the guarantee of a minimum rate of pension, these advantages are reserved for insured persons in respect of whom contributions have been paid for a period corresponding to the normal duration of working life. Schemes which secure to every pensioner who has completed the qualifying period a pension of fixed amount,

or comprising a fixed component, not dependent on the time spent in insurance, generally limit the period during which the contributions paid retain their validity, so that the rights in course of acquisition in respect of contributions are terminated on the expiry of a term reckoned from the date when the insured person ceased to be liable to insurance.

The simultaneous requirement that a qualifying period should be completed and that rights in course of acquisition should be maintained often proves impossible to fulfil in the case of migrants. If at the time of his departure for the other country a worker has not yet completed the qualifying period, the only course open to him will be to continue his insurance in the former country, should he have the opportunity and the means of doing so, for otherwise he will lose all credit for the contributions hitherto paid in respect of him. Moreover, even if at the time of his departure he had already completed the qualifying period, it would nevertheless be necessary for him to maintain his rights in the former country by payments of prescribed amount and frequency. The insurance scheme in the country of immigration will, however, take no account of the contributions which have been credited to the migrant in the country of emigration: it will in turn require the completion of a qualifying period and the maintenance of rights under its own provisions. Such situations are of frequent occurrence, and they result in unjustified hardship to migrants. It is in order to avoid them that an international scheme has to be organised for the maintenance of rights in course of acquisition.

The maintenance of acquired rights is inherent in every scheme of insurance properly so called, since insurance benefits should be payable in virtue of strict legal right. Under many schemes, however, the application of this principle is subject to restrictions, particularly in the case of pensioners who take up their residence abroad, when the continuance of the pension may be conditional upon the authorisation of the insurance institution concerned, or the pension may be commuted for a lump sum smaller than its capitalised value or even suspended in whole or in part, or again any subsidy or supplement to the pension which is payable out of public funds may be withdrawn. In the interest of social insurance pensioners who have to change their country of residence, and especially in the interest of migrants returning to their country of origin, it is highly desirable to secure the abrogation of the requirement of residence in the country of the debtor institution, subject to the sole proviso that this institution shall be able to

verify whether the pensioner, save that he is residing abroad, continues to fulfil the normal conditions for entitlement to pension.

The wording of the item on the agenda indicates that the reference is to those workers only who transfer their residence from one country to another. It follows that no question arises of regulating the transfer from one insurance scheme to another within the same country.

Lastly it should be observed that, in the view of the Office, the task to be accomplished is the establishment of an international scheme for the maintenance of rights under schemes of invalidity, old-age and widows' and orphans' insurance: it will not suffice merely to lay down or recommend certain principles according to which two or more countries could make reciprocal arrangements for the maintenance of rights. A system of international regulation which did not itself define the rights of migrant workers would fail to achieve its purpose. It is at all events the duty of the Office to neglect no opportunity of establishing a system of general international regulations capable of immediate application.

II. — Maintenance of Rights in Course of Acquisition

In order to secure the maintenance of rights in course of acquisition it is necessary to establish appropriate machinery. The technical difficulties and the administrative complications involved in the transfer of capital representing rights in course of acquisition have led the national administrative authorities and insurance institutions concerned to search for a method of maintaining rights which should be easy to apply and compatible with the variety of the financial systems on which invalidity, old-age and widows' and orphans' insurance is based in different countries.

The method sought for would maintain the continuity of the insurance career of the migrant worker without need for transfer of funds or settlement of accounts among the insurance institutions to which the migrant has been successively affiliated: the career of the migrant would not be interrupted every time he changed his country, and the period of insurance spent in the several countries would be linked up in such a way that, when the event insured against happened, the migrant would be able to base his claim in each country on the whole duration of his insurance.

Such a method, conceived already in 1919, is the basis of numerous bilateral treaties which are now in force or awaiting

ratification. This method is characterised by two rules: (1) the totalisation of insurance periods; (2) the acceptance of liability by each institution for a benefit proportional to the contributions it has received.

The essence of the method lies in the totalisation of insurance periods. In order to decide whether a migrant is entitled to benefits, each institution takes account, not only of periods of insurance spent under its own law, but also of those spent under the laws of every other institution participating in the international scheme for the maintenance of rights.

The acceptance of liability by each institution for a proportional benefit is the proper consequence of the totalisation of insurance periods. If each institution had to take account of the total of the insurance periods, not only for the purpose of deciding whether the qualifying conditions are fulfilled, but also for the purpose of calculating the rate of benefit, it would incur an undue liability. Of course it is fair that each institution should pay benefits corresponding to the contributions which it has received on account of the migrant, but when it is a question of benefits or benefit components determined independently of the number and the amount of the contributions paid, the insurance institution should only be required to pay them in the same proportion as the periods spent under its own law bear to the total of the insurance periods to the migrant. The reduction thus effected in the fixed benefits or benefit components renders the liabilities of the insurance institution proportional to the consideration it has received in the shape of the contributions paid in respect of the migrant.

A. — Beneficiaries under International Scheme

[2] *Definition of Beneficiaries*

No doubt can arise as to the terms of the definition: the beneficiaries of the international scheme to be established would be workers who have been, or will be, affiliated successively to institutions of invalidity, old-age and widows' and orphans' insurance in two or more States Members, together with the dependants of such workers.

As already explained, the scheme would not concern workers who transfer from one insurance institution to another within the same country.

[3] *Nationality of Beneficiaries*

The definition of the beneficiaries may be restricted by introducing as a criterion the political status of the migrant: the advantages of the international scheme will then be reserved for the nationals of States Members adopting the scheme.

This restriction is found in several bilateral treaties, which thus provide for the maintenance of rights only on behalf of nationals of the contracting countries. Nevertheless, the majority of the treaties concluded in recent years do not make this restriction, but provide for the maintenance of rights on behalf of all migrant workers irrespective of their nationality.

The problem is an important one, and the Governments should, in the opinion of the Office, be asked to give their opinion as to the application of the scheme either to all persons insured or formerly insured irrespective of nationality or only to persons who are nationals of Members adopting the international scheme to be established.

B. — Totalisation of Insurance Periods

[4] *Totalisation for Maintaining Rights*

The first feature of the international scheme to be examined is the totalisation of insurance periods and its operation in relation to the several legal implications of insurance.

An international scheme must in the first place facilitate the maintenance of rights in course of acquisition. There exist, as already stated, a few old-age insurance schemes under which each contribution represents a single premium which purchases a deferred annuity: the validity of each contribution is unlimited and independent of the amount and frequency of later payments.

Under all other insurance schemes the validity of any contribution is only maintained automatically for a prescribed term, since the financial stability of the scheme presupposes that contributions will be paid in respect of all insured persons with a certain regularity throughout their working life. Under these schemes a contribution credited to the insured person does not give an unconditional right to benefit, but only a possibility of acquiring a right, the realisation of which is subject to the maintenance of the validity of the contribution.

The effect of totalising periods of insurance is that the periods

spent in one country maintain the validity of contributions paid in that country, and also of those paid in another country.

All contribution periods in all the countries participating in the international scheme are totalised for the purpose of maintaining rights: on this point there can be no difference of opinion.

The case is otherwise with periods in respect of which contributions are not payable, but during which rights are maintained under the law of one or other of the insurance institutions concerned. The question arises whether each institution shall take account of periods assimilated to contribution periods in so far as they involve the maintenance of rights under the law of at least one of the institutions concerned, or shall take account only of periods which involve the maintenance of rights under the law of the particular institution concerned. It would seem that the Governments should be consulted on this point.

Each institution should moreover take account, for the purpose of maintaining rights, of periods during which a pension is paid to the migrant by any other institution participating in the international scheme, for otherwise the migrant who has been awarded a pension in one country would lose the credit for his contributions in another.

[5] *Totalisation for Reckoning Qualifying Period*

Totalisation also comes into play for the purpose of reckoning the qualifying period or the number of contributions prescribed for entitlement to special advantages. Each insurance institution, when deciding whether the qualifying period or other condition for entitlement to special advantages is fulfilled, takes account, not only of periods completed under its own law, but also of those completed under the law or laws of every other institution in the other country or countries participating in the international scheme.

All periods in respect of which contributions have been paid are totalised. Besides contribution periods properly so called account is to be taken of other periods in respect of which the insurance institution has been paid a consideration for the rights corresponding to such periods: periods credited in virtue of a lump-sum payment made at the time of entry into insurance, periods of unemployment covered by contributions from an unemployment insurance scheme or an unemployment guarantee fund, etc.

Again, besides contribution periods and other periods in respect

of which payment has been received by the insurance institution, numerous laws include, for the purpose of reckoning the qualifying period, certain other periods in respect of which no payment is required: periods of temporary incapacity for work, periods of unemployment, etc. Assimilation of these periods to contribution periods is, as a rule, only partial, since only a certain proportion of their duration is taken into account, and often a maximum duration is fixed beyond which they are not taken into account at all.

It is proposed to consult the Governments as to the totalisation, for the purpose of reckoning the qualifying period, of contribution periods and also periods assimilated to contribution periods under the law of at least one of the institutions concerned.

[6] *Totalisation of Periods Spent under Occupational Insurance Schemes*

In many countries there exist special insurance schemes established, sometimes on behalf of persons employed in certain occupations, such as miners and seamen, sometimes on behalf of social classes, such as non-manual workers or salaried employees. Under these schemes more valuable benefits are provided for, but also higher contributions, than under a general scheme. The transfer from a general to a special scheme should not have the effect of injuring the latter: such is the sense of the provisions of national law which deal with the transfer of workers from a general scheme to a special scheme in the same country. If, in such a case, workers were able to have credited to them by the special scheme the time spent by them under the general scheme at its face value, they would be better treated than persons who had been continuously insured under the special scheme and continuously paying contributions at the higher rate.

The same question of equity also arises on the international plane. Are periods of insurance spent under the general scheme of country A to be added to periods spent under a special scheme in country B for the purpose of reckoning the qualifying period provided for by the latter ? Bilateral treaties as a rule safeguard the interests of special schemes. There exist treaties the scope of which is expressly limited to the occupational schemes of the contracting countries, for example, treaties concerning miners' pensions; here totalisation is only operative as regards periods spent under such schemes. In treaties applying to several or

even all the insurance schemes of the contracting countries the usual provision is that, for the purpose of calculating the qualifying period or the number of contributions required for entitlement to the special advantages of an occupational scheme, only periods spent under the corresponding occupational schemes of the two countries shall be totalised.

This restriction does not, or at least should not, affect the maintenance of rights, for which purpose periods of insurance spent under any scheme at all should be taken into account.

Some treaties of recent origin introduce a variant of the procedure outlined above for the purpose of rendering it applicable as between countries one of which does, and the other does not, possess a special scheme for a certain occupation: where in one country there does not exist a special scheme for a certain occupation, periods spent in that occupation under any scheme of insurance are totalised for the purpose of reckoning the qualifying period. This modification would seem to safeguard all the interests concerned, provided that proof is furnished of actual employment in the occupation in question.

In consulting the Governments, attention should be drawn to the question whether the totalisation rule should not be modified where the right to pension or to certain special advantages is subject to the condition that all periods of insurance must have been spent in an occupation covered by a special insurance scheme. If so, only periods spent under similar special schemes of the several Members would be totalised for the purpose of reckoning the qualifying period or the minimum number of contributions required.

[7] *Totalisation in connection with Other Implications of Insurance*

According to the needs of the contracting countries, bilateral treaties may provide for the extension of the principle of totalisation, not only to the qualifying period and the maintenance of rights, but also to other legal implications of insurance.

(a) *Recovery of rights.* — Those laws which only maintain the validity of contributions during a certain term generally afford the person who has dropped out of insurance an opportunity to recover his rights which have lapsed: the payment of a prescribed number of fresh contributions will restore those rights. The person concerned will then have credited to him anew all the contributions previously paid in respect of him. It is only just that the totalisa-

tion of insurance periods should also operate for the purpose of the recovery of rights which have lapsed.

(b) *Right to enter voluntary insurance.* — Entry into voluntary insurance is as a rule only allowed if the applicant can prove that he has paid a prescribed minimum number of contributions in virtue of compulsory insurance. This precaution is intended to prevent the entry of persons who neither have been, nor are, normally occupied as wage earners. This legitimate consideration, however, ought not to result in the exclusion from voluntary insurance of migrant workers who have perhaps been insured for many years in the country of emigration. For this reason it should be agreed that the totalisation of insurance periods should operate also for the purpose of determining the right to enter voluntary insurance.

[8] *Reckoning of Concurrent Periods*

Contribution periods and assimilated periods spent simultaneously in two or more countries are only counted once for the purpose of totalisation. This rule is to be found in all the treaties, since but for it a migrant who voluntarily continued his insurance in the country of emigration while already liable to insurance in the country of immigration would complete the qualifying period more quickly than other insured persons. It is not the object of totalisation to place migrant workers in a better situation than others: hence the foregoing rule.

[9] *Disregard of Short Periods*

Certain treaties only take account, for the purpose of totalisation, of periods exceeding a prescribed minimum duration with the same institution or with several institutions in the same country. This restriction is imposed for reasons of administrative convenience.

C. — Determination of Pension Liability of Each Insurance Institution

[10] *Appraisal by Each Institution of Rights of Claimant*

Each insurance institution which has received contributions in respect of the migrant determines only under its own law whether the claimant, account being taken of all insurance periods, satisfies

the prescribed qualifying conditions. It is evident that the machinery for the maintenance of rights will work the more easily, the more the sets of qualifying conditions prescribed by the several national laws resemble one another. Nevertheless, the method of maintaining rights here under consideration, which is that followed in almost all the bilateral treaties, is characterised by the rule that each institution, save when totalising the insurance periods, applies its own law only.

[11] *Liability of Each Institution for Benefit Proportional to contributions Paid to it*

Each insurance institution with respect to which the migrant fulfils the qualifying conditions prescribed by its law calculates according to its own law the benefit due; in doing so it takes into account only contribution periods which the migrant has spent with it, and periods assimilated under its law for the purpose of reckoning benefits.

If all the elements entering into the composition of a pension varied with the contributions paid to this or that institution, the rule just formulated would result in a fair distribution of the liability for benefits among the institutions concerned, but this rule is no longer applicable where any of the institutions provide benefits or portions of benefits which are fixed independently of the number and amount of the contributions paid (save the qualifying contributions), such as pensions the right to which is the same for all pensioners who have completed the qualifying period, fixed sums or basic amounts determined independently of the time spent in insurance or the fixed supplements, minimum pensions or allowances which certain laws guarantee.

If an insurance institution, the law of which provides for benefits or portions of benefits which are fixed in amount, was obliged to pay to migrants such benefits or portions in their entirety, it would incur a liability which would be disproportionate to the contributions it has received on their behalf, and the interests of the other insured persons would be prejudiced to a corresponding extent. In order to reach an arrangement which is at once equitable for the migrants and acceptable for the remainder of the insured, it is necessary to treat the fixed benefits in the same way as benefits which vary with the time spent in insurance. For this purpose each institution must be authorised to pay only such fraction of any benefit or benefit component which is determined independently

of the time passed in insurance as corresponds to the ratio of the contribution periods spent under the law of the institution concerned to the total of the periods taken into account for the purpose of reckoning benefits.

This rule necessarily appears in all the bilateral treaties and it is among the points upon which the Governments should be consulted.

The rule, however, is not sufficiently explicit. There exist types of benefits in which there can be discerned a portion which is virtually fixed, in the sense that it is secured to every pensioner once he has completed the qualifying period. Further adaptations of the rule may be found to be useful or even necessary. It has, however, seemed preferable not to overload the list of points with cases of this kind, and to leave it to the Governments concerned to refer to these cases in the course of the consultation.

[12] *Subsidies, Supplements or Allowances Payable out of Public Funds*

A contribution from the public authorities is provided for under almost all insurance schemes covering employed persons in general or manual workers, as well as under the majority of schemes of miners' pensions. This contribution may assume different forms: the State may contribute to the general funds of the scheme or to special funds the object of which is to pay supplements to, or fractions of, pensions or allowances to all or certain classes of beneficiaries; or again the public authorities may contribute subsidies or supplements which are added to the pensions paid out of funds constituted by the contributions of insured persons and their employers.

The question arises whether the rules which have been formulated above are applicable to the benefits which are financed out of funds provided by the public authorities. On this point the bilateral treaties are not unanimous.

In so far as the contribution of the public authorities takes the form of supplements proportional to the contributions paid in respect of each insured person, no difficulty arises: each country reckons the supplements for which it is liable, in proportion to the number and amount of the contributions paid under its law in respect of the migrant.

On the other hand, the bilateral treaties do not agree as to the treatment of subsidies or supplements which are added to each

pension as it is awarded and which are determined independently of the time spent in insurance. Some treaties apply to fixed subsidies and allowances the same rule of reduction as is applied to benefits which are a fixed amount determined independently of the time spent in insurance, so that each country assumes liability for subsidies and allowances in the same proportion as the period spent under its law bears to the total of the periods taken into account. Other treaties have preferred another solution, which consists in making the country of residence of the pensioner solely liable for the payment of subsidies which are payable out of public funds.

Furthermore, there are treaties concerning the maintenance of rights which do not deal at all with subsidies payable out of public funds, so that such subsidies can only be granted in so far as the law under which they are claimed allows.

[13] *Application of Reduction Rule where One Institution Only is Liable for Benefit*

The reduction rule applies normally where the insurance institutions of two or more countries are simultaneously required to pay the migrant their share of a joint pension. How is it to apply where one institution only is liable for benefit, since the qualifying conditions laid down by the law of the other country or countries are not fulfilled ? In so far as the right to pension is only acquired as the result of totalising the insurance periods, it would be only just to authorise the institution liable for benefit to invoke the corollary of totalisation, that is to say, to proceed to the reduction of the fixed elements of benefit. Would the procedure be the same where the migrant was only entitled to pension from a single institution but based his right, not on totalisation, but simply on his insurance under the law of that institution exclusively ? The bilateral treaties, even those which deal with this question, do not agree in their treatment of it.

[14] *Non-Application of Reduction Rule to Short Periods Spent with a Particular Institution*

The majority of the treaties dispense from all liability those insurance institutions with which the migrant has only spent altogether a very short period of insurance. In order that the migrant's interests should not be injured, it is at the same time

stipulated that no reduction of benefit shall be effected by one insurance institution in respect of short periods spent with another institution.

This twofold rule saves the migrant from any loss, since the periods which do not count towards benefits from one institution are taken into account by the other. There exist, however, treaties which dispense from all obligation an insurance institution with which only a very short total period of insurance has been spent, although they allow the reduction of liability for benefit in respect of the same period.

[15] *Protective Clause*

The majority of the bilateral treaties guarantee to their beneficiaries who are entitled to benefit in the two countries a joint benefit equal to the benefit which they would have obtained in the absence of the treaty in respect only of the periods spent with a particular institution. The institution which would otherwise have profited by the reduction of the benefits for which it is liable is made responsible for this guarantee.

This protective clause, which is to be found in almost all the bilateral treaties, would need to be amplified to meet the case where three, or more than three, institutions would be concerned by it: if complementary benefit were due from several institutions, it would be necessary to calculate it as being equal to the amount of the highest complementary benefit which would be due from any one of these institutions, while the liability for it would be distributed among the institutions in proportion to the complementary benefit which would have been due from each individually.

[16] *Maximum Limit for Total Benefit*

Corresponding to the protective clause, which serves the interests of the migrants, there has been introduced into several bilateral treaties a clause operating to protect the interests of insurance institutions: the total of the benefits awarded to the migrant may be limited to the amount of the benefit which would be due from the institution having the law which is most favourable to him as regards calculation of benefits if he had spent his entire insurance career with this institution. If this sum is less than the total of the shares of benefit, a proportional reduction of each share is to be effected.

[17] *Medical Treatment and Care*

Treatment and care for the purpose of preventing, postponing, alleviating or curing invalidity in the case of persons who, on the ground of invalidity, are or might be entitled to a pension, ought to be provided both in the interest of the individual insured person and in that of the insured population as a whole. Migrants ought to be cared for by insurance institutions in the same way as other insured persons.

Several treaties concerning miners' insurance contain clauses dealing with the right of migrants to medical care: if and in so far as there exists under such a scheme a right to medical benefit, reference shall be made to the total of the insurance periods for the purpose of ascertaining whether the right has been acquired. Medical treatment is administered to the migrant by the institution with which he was last insured or by the institution of his place of residence, and the cost is either borne by the institution as just defined or else shared by all the institutions to which the migrant has successively been affiliated.

D. — Arrangements for Paying Benefits

[18] *Submission of Claims for Benefit*

In order to enable migrants more easily to enforce their rights, several treaties authorise them to submit their claims for benefit to one only of the insurance institutions concerned, their claims being deemed to be dated as from the date of their delivery at this institution, by every other institution concerned. Where the treaty contains no such authorisation, migrants are obliged to submit their claims to each institution separately.

There is no doubt that this facility is a very valuable privilege for migrants, and it would seem desirable that it should be given consideration by the Governments.

[19] *Rate of Exchange*

In calculating the rate of the benefit for which it is liable, an insurance institution may have to take account of the benefit for which the institution of another country is liable. In order to place these calculations on a sure basis, several bilateral treaties stipulate that, when the value of a sum is to be calculated in the

currency of another country, the conversion is effected at the rate of exchange in the foreign exchange market of the capital of the country in the currency of which the sum is expressed. This provision might be embodied in the international scheme to be established.

[20] *Provisional Benefit*

The actual payment of the benefit due to migrants may, however expeditious the treatment of the claim by the insurance institutions, be delayed and the beneficiary may thereby suffer hardship. For this reason several treaties require an insurance institution which is liable to pay a pension in virtue simply of insurance periods spent under its own law, to grant provisional benefit pending the settlement of the claim. Under other treaties, the grant of provisional benefit is merely optional.

E. — Optional Provisions

[21] *Discharge of Liability by Transfer of Capital representing Rights in Course of Acquisition*

The method employed by almost all the bilateral treaties secures the maintenance by each country of rights in course of acquisition without any transfer of funds or settlement of accounts between the insurance institutions of the countries in which the migrant has been successively insured. It would seem that the international scheme for the maintenance of rights should be based on the same method.

This should not mean, however, that the international scheme should reject every other method which enables migrants to be paid consideration for the rights which they are in course of acquiring. If, instead of maintaining the rights of the migrant until the end of his career, an insurance institution prefers to discharge its liability at the date of the departure of the migrant by the payment of the capital representing his rights in course of acquisition, there would seem to be no serious reason to prevent it from doing so. This method of discharging liability could only be employed in agreement with the insurance institution which henceforth is to be responsible for the migrant and to which the capital must be transferred. The risk would be covered by the new institution as soon as it received this capital, which it would apply to the

purchase of insurance rights for the migrant in accordance with its own scale.

A provision of this kind would of course be of an optional character. It is on this understanding that the Governments should be consulted as to whether insurance institutions should be afforded the option of discharging their liability by the transfer of the capital representing rights in course of acquisition at the date of the departure of the migrant.

III. — Maintenance of Acquired Rights

The rights acquired under schemes of invalidity, old-age and widows' and orphans' insurance should be maintained as long as their possessors fulfil the prescribed qualifying conditions, and pensions once awarded should continue to be paid as long as the consequences of the event giving rise to benefit persist. A fair number of laws, however, terminate the payment of certain benefits in spite of the continuance of the circumstances in which they were awarded. Thus it frequently happens that pensioners who take up their residence abroad are faced with the so-called condition of residence which makes the continued receipt of the pension dependent on residence in the country in which the institution liable for the pension is established.

This condition differs in its application from one country to another. Thus it may be applied to all pensioners irrespective of nationality or only to foreign pensioners. In both cases it is felt most severely by migrants who are obliged to return to their country of origin or who desire to do so, this desire being natural in the case of persons who are elderly or have lost their breadwinner.

The condition of residence may be compulsorily applicable, so that non-residence in the country in which the insurance institution is established necessarily results in loss of all rights; or its application may be optional, the insurance institution being free to use its discretion in the treatment of non-residents.

Certain laws, though laying down a condition of residence, allow a pensioner residing abroad to continue to receive his benefit if he has been authorised by the insurance institution concerned to reside abroad. Other laws are stricter and impose serious restrictions on pensioners who remove their residence to a foreign country: commutation of the pension for a lump sum smaller than the capitalised value of the pension, suspension of subsidies or supplements payable out of public funds, total suspension of the pension.

The reasons for these restrictions are to be found in the practical difficulty and cost of effecting periodical payments abroad, in the effect of these payments on the trade balance of the country in which the institution liable for the pension is established, and in the difficulty of verifying the continuance of the circumstances in respect of which the pension was awarded.

In the course of recent years a fair number of bilateral treaties have been concluded for the purpose of abolishing the condition of residence as between the contracting countries, or at least limiting its application. Thus the condition of residence is abolished in these treaties:

(*a*) either on behalf of nationals of the contracting countries while residing in one or other of these countries;

(*b*) or on behalf of all persons entitled to pensions irrespective of nationality while residing in one or other of the contracting countries;

(*c*) or on behalf of the nationals of the contracting countries, but irrespective of the country in which they reside.

These bilateral treaties are based on the principle of the maintenance of acquired rights, although they impose some restrictions on its application. Nevertheless, they indicate the way that should be followed in order to arrive at a general international scheme based on the recognition, without any restriction, of the principle of the maintenance of acquired rights under invalidity, old-age and widows' and orphans' insurance.

A. — Beneficiaries under International Scheme

[22] *Residence of Beneficiaries*

The definition of the classes of persons who are to benefit under the international scheme should be as wide as possible, and should include all those entitled to cash benefits. The question whether the criterion of nationality should come into play will be dealt with later.

It has already been mentioned that the definition of the scope of the scheme could probably not be formulated without reference to the country to which the pensioner has transferred his residence. It must be admitted that a definition which would secure the payment of pensions in every country, including countries which are

not Members of the Organisation, would have no chance of obtaining general acceptance.

The fact is that every insurance institution must take reasonable precautions when paying pension instalments, and must verify whether the circumstances in which the pension was awarded continue to exist. In the case of pensioners residing abroad, it is only rarely that this verification can be effected by the institution itself which is liable for the pension. The latter may, indeed, have recourse to the services of the consular authorities of its country. Nevertheless, only a system of mutual assistance between the administration authorities and insurance institutions of the country of residence of the pensioner and those of the country in which the institution liable for the pension is established will enable the supervision and verification necessary in order to practise the maintenance of acquired rights on a large scale to be carried on.

Reference will again be made to this question of mutual assistance in administration, which is an indispensable feature of the international scheme for the maintenance of acquired rights. Here it is merely necessary to point out that the territorial scope of the international scheme—whether limited to pensioners residing in a country adhering to the international scheme or extended to all pensioners, irrespective of country of residence—is largely conditioned by the organisation of mutual aid in administration.

[23] *Nationality of Beneficiaries*

As has already been stated, some bilateral treaties only abolish the residence condition in so far as the nationals of the contracting countries are concerned, but it has also been pointed out that in other bilateral arrangements this privilege has been extended to all pensioners, irrespective of nationality.

Since the criterion of nationality may be regarded as essential, it seems necessary to consult the Governments as to the application of the international scheme either to all persons irrespective of nationality or only to nationals of Members adhering to the scheme.

B. — Purposes of Scheme

[24] *Maintenance of Benefits Entire*

Since the residence condition has been declared inapplicable to beneficiaries under the international scheme to be established, they will retain, as long as they remain covered by the scheme, the

right to the whole of the benefits awarded to them under the law of the country of the institution liable for the pension, including the supplements and allowances which such benefits attract. In other words, the beneficiaries under the scheme are to be treated, as regards the benefits to which they are entitled, as if they had not ceased to reside in the country in which the institution liable for the pension is established.

[25] *Subsidies, Supplements or Allowances Payable out of Public Funds*

The national laws, and even several bilateral treaties which guarantee the payment of pensions abroad, often make reservations as regards the maintenance of subsidies, supplements and allowances payable out of public funds, and provide that such portions of pensions shall not be paid to beneficiaries residing abroad.

This question is an important one for the international scheme, which, in order to achieve fully its purpose, should also secure the maintenance of benefits derived from public funds. It is proposed to consult the Governments on the question whether they consider that these sums should come within the purview of the international scheme to be established.

If the Governments should adopt an affirmative attitude, the question of the nationality of beneficiaries might arise a second time. For if the international scheme was limited in its scope to the nationals of Members adhering to it, the same restriction would also be applicable to the payment of subsidies, supplements or allowances paid out of public funds. If, on the contrary, it was decided to extend the scope of the scheme to the maintenance of pensions awarded to all persons, irrespective of nationality, it might nevertheless happen that a demand would be made that this privilege should be reserved, so far as sums paid out of public funds were concerned, for the nationals of Members adhering to the international scheme to be established.

[26] *Restriction on Commutation of Pension*

It has been stated that certain laws provide that pension claims may be discharged by the payment of a lump sum where the claimant transfers his residence abroad. Settlement by commutation is prejudicial to the interests of the migrant whenever the payment which he receives is smaller than the capitalised value of the pension.

Once it is agreed that the beneficiaries under the international scheme would be entitled to the maintenance of their benefits entire, the commutation of the pension for a lump sum smaller than its capitalised value would no longer be permitted: the provisions of the national law allowing such commutation would become inapplicable to the beneficiaries under the international scheme.

Nevertheless, in order to remove any doubt on this point, it would seem desirable to consult the Governments upon it.

C. — Arrangements for Paying Benefits

The formalities laid down by the national law of a country in connection with the payment of insurance benefits outside its territory—for example, the notification of the place of residence abroad to the insurance institution, and periodical proof that the beneficiary is alive—should likewise apply to beneficiaries under the international scheme to be established. The bilateral treaties, indeed, expressly provide that the provisions of national law as to the formalities to be fulfilled by beneficiaries are not affected.

[27] *Medium of Payment*

The fact that the pensioner resides abroad does not modify the obligations of the institution liable for the pension in the matter of the law under which payment is to be effected. Each insurance institution grants benefit in the ordinary way within the limits of its territory and in the currency of its country. Subject to any arrangements which may be made to facilitate payment abroad, the institution is not obliged to effect payment otherwise than in its national currency. It follows that the operations of exchange and transfer are effected at the risk and expense of the addressees abroad.

[28] *Commutation of Small Pensions*

The payment of small pensions abroad involves relatively considerable expense. Hence several bilateral treaties incorporate a provision, found in certain national laws, to the effect that the insurance institution liable for the pension shall have the option of commuting for a lump sum, to be calculated according to actuarial rules, those pensions the monthly instalments of which do not reach a certain prescribed minimum.

A similar provision might be embodied in the international scheme to be established, Members being given the power to fix the minimum rate of the pension by mutual agreement.

[29] *Provision for Reduction and Suspension*

In principle, the benefits payable in virtue of compulsory insurance are awarded as a strict legal right. Numerous laws, however, restrict the application of this principle to the extent that the payment of benefit may be suspended in whole or in part as long as the pensioner is in receipt of another benefit payable in virtue of any law concerning compulsory social insurance or workmen's compensation for accidents or occupational diseases.

These provisions which prevent or restrict the possibility of concurrent benefits are defended on the ground that it is not the function of social insurance to provide benefits of a total amount greater than the loss suffered by the insured person or his dependants.

The bilateral treaties concluded between countries the laws of which embody such provision for reduction or suspension stipulate that these restrictions shall operate in the case of pensioners even in respect of benefits payable by an insurance institution of the other contracting country.

The international scheme to be established should of course secure against loss workers who transfer their residence abroad, but, on the other hand, it cannot fail to take account of the benefits payable under the insurance schemes of other countries. It follows that the provision for reduction or suspension contained in the national law of a Member could be applied to beneficiaries even in respect of benefits payable by an insurance institution belonging to any other Member adhering to the international scheme to be established.

The question is very complicated, but it is one upon which the Governments should be consulted.

IV. — Mutual Assistance in Administration

Hitherto the rules governing the payment of the benefits due to beneficiaries residing abroad have been discussed without reference to the mutual assistance in administration to be arranged between the Members adhering to the international scheme to be established.

There can be no doubt, however, that the organisation of mutual administrative assistance would facilitate the working of the scheme —and, indeed, that in some respects the scheme could not work satisfactorily without it.

[30] *Principle of Mutual Assistance*

This principle is laid down in all the bilateral treaties. It entails on the administrative authorities and insurance institutions of the contracting countries the duty of lending one another assistance, just as they would in applying their own insurance law. This principle concerns insurance institutions on the one hand and the administrative and judicial authorities on the other, whether such authorities are of a specialised or of a general character, but in the latter case only in so far as they participate in the administration of insurance legislation.

If the principle of mutual assistance were accepted, every Member adhering to the international scheme to be established would have to indicate the authorities and institutions which would be ready to assist the corresponding bodies of the other Member. The Members concerned would establish the methods of affording assistance by mutual agreement.

[31] *Investigation*

Certain administrative formalities must inevitably be fulfilled by mutual assistance: investigations and medical examinations which are necessary for determining whether the beneficiaries continue to satisfy the conditions for entitlement to a benefit. The investigation would be undertaken at the request of the institution liable for benefit, and, as a rule, would be effected by the administrative authority or the insurance institution within whose area the claimant or beneficiary resides.

[32] *Expenses of Mutual Assistance*

The method of repaying the expenses of assistance might either be left to be agreed upon between Members or definitely laid down in the international scheme to be established. In the latter case it should, however, be provided that the expenses of assistance should be repaid by the authority or institution which has asked for it, according to the scale of the authority or institution which has afforded it, or, in the absence of a scale, up to the amount of the actual cost. The date of repayment would also have to be indicated.

[33] *Exemption from Taxation*

Some bilateral treaties extend the privilege of the exemption from taxes which is allowed in the case of documents submitted to the administrative authorities and insurance institutions of one contracting country to the corresponding documents submitted in the course of the application of the treaty to the authorities and institutions of the other contracting country. This provision creates fiscal equality between the contracting countries, and it might, if the Governments agree, be embodied in the international scheme to be established.

[34] *Administration of Benefits by Institution of Place of Residence of Beneficiary*

The majority of bilateral treaties provide for a special form of mutual assistance for the purpose of effecting payment of benefits: the institution which is liable for the pension may, at its expense, empower the institution of the other country which is competent for the place of residence of the beneficiary to administer benefits on its behalf, and especially to effect payment of pensions.

The international scheme ought no doubt to make provision for this form of mutual assistance, though the arrangements to be concluded between the insurance institutions of the several countries would be subject to the approval of the central administrative authorities concerned.

V. — Effects of International Scheme

[35] *Date of Coming into Force*

The date on which the Draft Convention establishing the international scheme for the maintenance of rights would come into force would be determined according to the usual rules: it would come into force twelve months after the ratifications of two Members had been registered; thereafter it would come into force for each Member twelve months after the registration of its ratification.

These provisions, already established by tradition, are mentioned here merely for the purpose of emphasising that the putting into force of the Convention by each Member would be obligatory on the expiry of twelve months from the date of its ratification. Any

supplementary agreements which might be provided for in the Convention should normally be concluded in the course of the year elapsing between the date of registration and the date on which the Convention comes into force for the Members concerned. This period would appear to be sufficient, provided that the rights of beneficiaries are clearly defined in the Convention itself.

[36] *Pensions Not Awarded or else Suspended by Reason of Residence Abroad*

The provisions relating to the maintenance of acquired rights have as their principal object the abolition of the restrictions imposed on the receipt of pensions during residence abroad.

In the absence of an article dealing expressly with pensions which have not been awarded or have been suspended before the coming into force of the Convention simply on the ground of residence abroad, the Convention would only apply to events which happened subsequently to its coming into force. Such an arrangement would not be fully satisfactory. Since the residence condition ought not to apply to beneficiaries under the Convention, it would be only just to stipulate, on behalf of persons who fulfil in other respects the conditions laid down in the Convention, that pensions in respect of which no award has been made or which have been suspended, merely because of residence abroad, should now be granted or resumed. The effect of the Convention would thus be retroactive as regards pension rights but not as regards payment of pensions, for there would be no liability to pay pension instalments for the period preceding the date when it was put into force.

[37] *Recovery of Rights in respect of Periods Antecedent to the Coming into Force of the Convention*

An international scheme for the maintenance of rights in course of acquisition which dealt only with rights arising in respect of periods subsequent to its coming into force would be of little value for the present generation of insured persons. For this reason all the bilateral treaties which have been concluded recently require, or at least enable, rights in respect of periods antecedent to the coming into force of the treaty to be restored: insured persons who before that date had passed out of insurance in one of the contracting countries into the insurance of the other and have for

that reason lost all credit for the insurance periods spent in the first country recover, or may be allowed to recover, as from the date on which the treaty comes info force, their rights in respect of those periods. Thus, the effect of the treaty is retroactive as regards rights in respect of periods antecedent to its coming into force.

It would seem that in the international scheme to be established the same policy might be followed: in administering it account should be taken of periods of insurance antecedent to the date when it is put into force by the Members concerned. Here also, however, the retroactive effect would be operative only as regards the rights in respect of these periods, but not as regards the pension instalments which would have been due for these periods, so that no payment would have to be made for the period antecedent to the coming into force of the Convention for the Members concerned.

[38] *Review of Previous Awards*

Once it is admitted that in applying the Convention account will be taken of rights in respect of periods antecedent to its coming into force, it becomes necessary to lay down the procedure for the review of awards already made, for the recovery of rights and for the making of awards in pursuance of the Convention.

The question of pensions which have not been awarded or have been suspended because of residence abroad has already been dealt with above[1]. As regards other cases which call for review, it would be desirable to state whether review is to take place *ex officio* or at the instance of one of the insurance institutions concerned, or only at the request of the insured person or his dependants.

If the desirability of review is accepted, it will then be necessary to consider whether the possibility of review should not be excluded in certain specified cases; for example, it might perhaps be expedient to exclude from review cases which before the coming into force of the Convention had been settled by the payment of a lump sum; and likewise cases where the migrant was awarded a pension before the coming into force of the Convention by the institutions of two or more Members.

Review would not involve the payment of any arrears of benefit for the period antecedent to the coming into force of the Convention.

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[1] *See p. 208.*

[39] *Undertaking by Members which Have Not Yet Established Compulsory Old-Age Insurance*

The list of points which follows has not been drawn up on the assumption that the insurance laws of Members adhering to the international scheme to be established should necessarily be equivalent. It would be understood that the arrangements for the maintenance of rights would operate irrespective of the level of protection guaranteed by the law of this or that Member. Since each insurance institution, apart from the totalisation of insurance periods, would only apply the conditions prescribed by its own law, equivalence in the matter of level of protection would not seem to be indispensable.

There is nevertheless one condition which must be fulfilled by the laws if the proper working of the arrangements is to be secured: insurance institutions concerned in the scheme must necessarily cover, if not all three risks of invalidity, old age and death, at least that of old age or invalidity as well. It follows that Members who adhere to the international scheme without having already established insurance against invalidity, old age and death, should undertake at the same time to introduce within twelve months after the date of registration of their ratification at least compulsory old-age insurance or compulsory invalidity insurance as well.

[40] *Effects of Denunciation*

The right to pensions and other benefits awarded in pursuance of the international scheme for the maintenance of rights should be secured once and for all.

The bilateral treaties respect the principle of acquired rights and embody express provisions for this purpose. The international scheme to be established might imitate their example.

It would follow that any denunciation would not affect the liabilities of insurance institutions in respect of events which occurred before the Member concerned ceased to participate in the international scheme: the provisions of the scheme would continue to apply in respect of events which had already occurred. Similarly, rights in respect of periods antecedent to the date when the Member concerned ceased to participate in the scheme would not be affected by denunciation.

[41] *Relationship between International Scheme and Bilateral Treaties*

In the appendix to this report is given a list of the treaties, at present in force or awaiting ratification, which have been concluded by certain Members for the purpose of securing reciprocally the maintenance of rights in course of acquisition and acquired rights. The fact that these treaties exist and the probability that others will be concluded make it necessary to examine the relationship between a general international scheme and the special treaties.

Two possible views of this relationship might be taken: either the Convention will be of an imperative nature and exclude any special treaty which contravenes its provisions, or else it will be of a directory nature and allow a certain latitude in the arrangements provided for by the special treaties.

(*a*) A convention of an imperative nature would imply for those Members which ratified it an undertaking not to enter into any special treaty which would be incompatible with the terms of the Convention. Thus Members would be free to extend by agreement the rules laid down in the Convention and might always confer on migrant workers a greater degree of protection and accept other obligations not forbidden by the Convention. In other words, special treaties which contravened the Convention would be excluded if they diminished the protection which the latter would afford; those treaties, on the other hand, would be allowed if their tendency was to extend or intensify such protection.

An undertaking of this kind might require Members who had already ratified the Convention to amend a treaty which they had already entered into. It is quite conceivable that the Members concerned might agree in preferring that treaties already concluded between them should be exempt from review. If such were the case, satisfaction might be given to their preference—on condition, of course, that the rights of other States bound by the Convention were not affected—by applying to special treaties already concluded before the coming into force of the Convention the rule which is frequently employed in international law, to the effect that a subsequent general law does not abrogate an antecedent special law (*lex posterior generalis non derogat priori speciali*).

(*b*) A convention of a directory nature would also define the conditions under which Members who had ratified it might arrange

for the maintenance of the rights of migrant workers. It would not, however, exclude special treaties which were not in conformity with it. It would not prevent the making of different arrangements between Members, whether before or after its coming into force, so long as the special treaty made positive provision for the maintenance of rights in the course of acquisition and acquired rights and that the rights of other Members under the Convention were not affected. The Convention would represent a system of law common to all the Members which had ratified it, but law which would be subject to amendment by means of special treaties. While remaining bound by the Convention in other respects, Members would be free within the limits which have just been indicated to adapt its provisions to their special needs. They would take advantage of this power by agreement with one another with the object of facilitating the making of reciprocal arrangements for the maintenance of rights. In the absence of individual treaties the maintenance of rights of migrant workers would be regulated simply by the Convention itself.

These two conceptions, one of which excludes, and the other allows within certain limits, variations by agreement, are not irreconcilable. A collective Convention, though imperative in principle, may embody directory clauses, and a Convention which is essentially directory in character might embody a certain number of imperative clauses. International practice offers many examples of both possibilities. Here it is a question of making general arrangements for the maintenance of the rights of migrant workers by means of international regulations which would create the maximum degree of uniformity which is compatible with the variety of national situations and with the tendencies of bilateral treaties.

CONSULTATION OF THE GOVERNMENTS

The foregoing analysis of the problems which might be dealt with by an international scheme for the maintenance of rights under invalidity, old-age and widows' and orphans' insurance was intended to make it possible to fix, as completely as possible, the points on which the Governments should be consulted, in conformity with the provisions of Article 6 of the Standing Orders of the Conference.

From this analysis and from the conclusions to which it leads as to the lines on which international agreement seems possible, a list has been drawn up of the points on which it is considered that the Conference should request the Office to consult the Governments.

I. — ESTABLISHMENT OF INTERNATIONAL SCHEME

1. Principle of the establishment, on behalf of workers who transfer their residence from one country to another, of an international scheme to organise, under compulsory invalidity, old-age and widows' and orphans' insurance:

(*a*) the maintenance of rights in course of acquisition;
(*b*) the maintenance of acquired rights.

II. — MAINTENANCE OF RIGHTS IN COURSE OF ACQUISITION

A. — Beneficiaries under International Scheme

2. Application of the scheme to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme, and to the dependants of such workers.

3. Nationality of beneficiaries:

Application of scheme:

(*a*) either to all persons, irrespective of nationality,
(*b*) or only to persons who are nationals of Members adopting the scheme.

B. — Totalisation of Insurance Periods

4. For the purpose of maintaining rights in course of acquisition as against each insurance institution concerned, totalisation of:

(*a*) contribution periods;
(*b*) and also periods in respect of which contributions are not payable but during which rights are maintained,

(1) either under the law of at least one of the institutions concerned;
(2) or only under the law of the particular institution concerned;

(*c*) and further, periods during which a pension is paid by any other institution concerned.

5. For the purpose of reckoning the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special benefits (guaranteed minimum pensions) as against each of the insurance institutions concerned, totalisation of:

(*a*) contribution periods;
(*b*) and also periods in respect of which contributions are not payable but which are counted for the purpose of reckoning the qualifying period or the prescribed number of contributions, under the law of at least one of the institutions concerned.

6. Occupational insurance schemes.

Restriction applicable where the national law of one of the Members subjects the award of certain benefits to the condition that all the periods must have been spent in an occupation covered by a special scheme of insurance (e.g. salaried employees' insurance, miners' insurance):

For the purpose of reckoning the qualifying period or the prescribed number of contributions, only those periods spent under the corresponding special scheme or schemes of the other Member or Members are totalised.

7. Application of the rules indicated in points 5 and 6 to other implications of insurance, in particular to:

(*a*) recovery of rights;
(*b*) right to enter voluntary insurance.

8. Reckoning of concurrent periods:

Contribution periods and assimilated periods spent simultaneously

in two or more States Members are reckoned once only for the purpose of totalisation.

9. Disregard of short periods:

For the purpose of totalisation, periods spent with a particular insurance institution are counted only if they exceed a minimum duration (e.g. 150 contribution days or 26 contribution weeks).

C. — Determination of Pension Liability of Each Insurance Institution

10. Appraisal by each insurance institution of the rights of the claimant:

Each institution, while totalising the periods to be counted, determines only under its own law whether the claimant satisfies the prescribed qualifying conditions.

11. Liability of each insurance institution for benefit proportional to the contributions paid to it:

(*a*) Benefits varying with the time spent in insurance:

Each institution with respect to which the claimant satisfies the qualifying conditions determines the amount due under its own law, having regard only to periods which have been spent under this law and are counted for the purpose of reckoning benefits.

(*b*) Benefits determined independently of the time spent in insurance.

In this case only such fraction of the benefits, or benefit components, determined independently both of the number and of the amount of the contributions paid (save the qualifying contributions), is due as corresponds to the ratio of the contribution periods spent under the law of the institution to the total of the periods counted for the purpose of reckoning benefits.

(Examples of benefits, or benefit components, determined independently of the number and amount of contributions: pensions the rate of which is the same for all pensioners, fixed sums or basic amounts determined independently of the time spent in insurance, fixed supplements, guaranteed minimum pensions or allowances.)

12. Application of rules indicated in point 11, (*a*) and (*b*), to subsidies, supplements or allowances which are wholly or mainly payable out of public funds.

13. Application of rule indicated in point 11, (*b*), in cases where the claimant is entitled to benefit from only one insurance institution:

(*a*) even where periods of insurance are totalised;
(*b*) without totalising, but only under the law of the institution.

14. Non-application of rule indicated in point 11, (*b*), to periods spent with a particular insurance institution which are less than a minimum (e.g. 300 contribution days or 52 contribution weeks), the institution not being liable for any benefit.

15. Protective clause:

(*a*) A beneficiary entitled to benefits in at least two countries to be guaranteed total benefit equal to the benefit which he would obtain in respect only of the periods spent with a particular insurance institution.
(*b*) This institution to be liable for any complementary benefit due as the result of the operation of the guarantee.
(*c*) This complementary benefit to be reckoned, where several institutions are concerned, according to the amount of the highest complementary benefit which would be due from any one of the institutions, and the liability for it to be distributed among them in proportion to the complementary benefit which would have been due from each individually.

16. Maximum limit for total benefit:

(*a*) Power to limit the total benefit awarded by the insurance institutions of two or more countries to the amount of the benefit which would be due from the institution having the most favourable law on the basis of all the periods which are to be counted.
(*b*) Any reduction to be effected proportionally on each portion of the benefit.

17. Medical treatment and care:

(*a*) Desirability of charging the insurance institution of the place of residence with the provision, for persons who on the ground of invalidity would be entitled to claim a pension,

of treatment and care for the purpose of preventing, postponing, alleviating or curing invalidity.

(*b*) Rules for contribution by other institutions concerned towards the cost of treatment and care.

D. — Arrangements for Paying Benefits

18. Submission of claims for benefit:

(*a*) either to only one of the insurance institutions concerned, which informs all the others mentioned in the claim;

(*b*) or severally to each institution concerned.

19. Rate of exchange:

When a sum has to be calculated in terms of the currency of another Member, it is converted according to the relation between the two currencies in the foreign exchange market of the capital of the Member in whose currency it is expressed.

20. Provisional benefit:

Pending final settlement, grant of provisional benefit by an insurance institution liable to pay a pension in virtue only of insurance periods spent under its own law.

E. — Optional Provisions

21. Discharge of liability by transfer of capital representing rights in course of acquisition:

Power of an insurance institution to discharge its liability to the insured person or his dependants by paying to the insurance institution which is thenceforward responsible for the insured person, subject to the latter institution's acceptance, the capital representing the insured person's rights in course of acquisition at the date of his departure.

III. — MAINTENANCE OF ACQUIRED RIGHTS

A. — Beneficiaries under International Scheme

22. — Residence of beneficiaries:

Application of scheme:

(*a*) either to all beneficiaries, irrespective of their place of residence;

(*b*) or only to beneficiaries resident in the territory of a Member adopting the scheme.

23. Nationality of beneficiaries:

Application of scheme:

(*a*) either to all beneficiaries, irrespective of nationality;

(*b*) or only to beneficiaries who are nationals of Members adopting the scheme.

B. — Purposes of International Scheme

24. Application of scheme:

(*a*) either to the entirety of the benefits the right to which has been acquired;

(*b*) or only to benefits other than subsidies, supplements or allowances which are payable wholly or mainly out of public funds.

25. Subsidies, supplements or allowances which are payable wholly or mainly out of public funds, to be granted:

(*a*) either to all persons, irrespective of nationality;

(*b*) or only to nationals of Members adopting the scheme.

26. Restriction on commutation of pension for lump sum:

Non-application to beneficiaries under the scheme, while resident in the territory of any other Member adopting the scheme, of any provisions of national law for the commutation of pensions for lump sums in case of residence abroad.

C. — Arrangements for Paying Benefits

27. Medium of payment:

Power of an insurance institution liable to pay benefit to discharge its liability to the person entitled to benefit in the currency of its own country.

28. Commutation of small pensions:

Power of an insurance institution liable to pay benefit to commute, for a lump sum to be calculated according to the provisions applicable to the institution, pensions the monthly rate of which does not reach a certain minimum (e.g. 5 gold francs).

29. Provision for reduction and suspension:

The provisions of the national law of a Member for the reduction or suspension of benefit in case of concurrent rights to other social insurance benefits or in case of exercise of an employment involving compulsory insurance apply to beneficiaries, even as regards benefit due from an insurance institution established in the territory of any other Member adopting the scheme and as regards the exercise of an employment in such territory.

IV. — MUTUAL ASSISTANCE IN ADMINISTRATION

30. Principle of mutual assistance:

The authorities and the social insurance institutions of Members adopting the scheme afford one another assistance to the same extent as they do in applying their own social insurance legislation.

31. Investigation:

Mutual assistance includes the necessary investigations and medical examinations requested by an insurance institution of any other Member adopting the scheme for the purpose of determining whether the persons in receipt of benefits for which this institution is liable satisfy the qualifying conditions.

32. Expenses of mutual assistance:

Rules for the repayment of expenses of mutual assistance:

(*a*) determination of the sum to be repaid according to the scale of the insurance institution or authority which affords assistance, or in the absence of a scale, repayment of the actual expenditure incurred;

(*b*) date of repayment.

33. Exemption from taxation:

The privilege of exemption from taxation accorded for documents submitted to the authorities or insurance institutions of one Member to be extended to the corresponding documents submitted in connection with the administration of the scheme, to the authorities and institutions of any other Member adopting the scheme.

34. Administration of benefits by the insurance institution of the place of residence of the beneficiary:

Where the beneficiary resides in the territory of another Member

adopting the scheme, the institution from which the benefit is due to be enabled to agree with the institution competent for the place of residence of the beneficiary that the latter institution should undertake the administration of the benefit subject to repayment by the former.

V. — OPERATION OF INTERNATIONAL SCHEME

35. Date of coming into force:

(*a*) initial coming into force:
twelve months after the registration of ratification by two Members;

(*b*) coming into force for other Members:
twelve months after the registration of their ratifications.

36. Pensions in respect of which no award has been made or which have been suspended, because the persons otherwise entitled to them reside abroad:
Award or resumption of payment of such pensions from the coming into force of the scheme;

37. Recovery of rights in respect of periods antecedent to the coming into force of the scheme:
In applying the scheme account to be taken of periods antecedent to the coming into force of the scheme.

38. Review of previous awards and review of rights with a view to their recovery or to making an award in pursuance of the scheme:

(*a*) The review takes place:
(1) *ex officio*;
(2) at the instance of one of the insurance institutions concerned;
(3) at the request of the claimant.

(*b*) The review does not take place:
(1) where the claim has been settled by a lump-sum payment;
(2) where the person concerned was awarded a pension before the scheme was put into operation by the institutions of two or more Members adopting it.

(*c*) The review does not involve the payment of any arrears of benefit for the period antecedent to the coming into force of the scheme.

APPENDIX

LIST OF TREATIES

embodying provisions concerning the maintenance of migrants' rights under invalidity, old-age and widows' and orphans' insurance.

This report is neither a handbook nor a collection of treaties: its purpose is simply to analyse the methods which have been applied or proposed. Hence it is based, as far as possible, on the most recent treaties, whether actually in force or still awaiting ratification; where there was a choice between a treaty in force and a draft treaty destined to replace the one in force, preference has been given to the signed draft, even if not yet ratified.

The nomenclature of the diplomatic instruments concerning social insurance is a varied one, and the terms " convention " " treaty " " arrangements ", " agreement ", " special treaty ", and " declaration " —are all employed to designate instruments having the same scope and the same rank as sources of law. All these instruments, nevertheless, are the result of treaties between the signatory States. In this report they are all called " treaties ", the term " convention " being reserved for instruments resulting from decisions of the International Labour Conference; only when it is necessary to distinguish between a treaty and a supplementary agreement for the purpose of applying the treaty, is the term " agreement " employed.

The references made in the report are, as a rule, to the first-mentioned, in the following list, in any group of treaties between a given pair of States.

Title of treaty	Date of signature	Date of ratification		Date of exchange of ratifications	Date of coming into force
		by	by		
(1)	(2)	(3)	(4)	(5)	(6)
Germany-Austria					
Treaty concerning social insurance .	5/2/30	Germany 24/3/31	Austria 27/1/31	31/3/31	1/4/31
Germany-France (Saar)					
General convention concerning social insurance	29/7/32				
First supplementary agreement .	17/9/32				
Second supplementary agreement .	17/9/32				

Title of treaty	Date of signature	Date of ratification		Date of exchange of ratifications	Date of coming into force
		by	by		
(1)	(2)	(3)	(4)	(5)	(6)
Spain-France					
Convention concerning social insurance	2/11/32	Spain 28/3/33			
France-Italy					
Arrangements concerning social insurance	13/8/32				
		France	Italy		
Labour treaty . .	30/9/19	10/1/21	29/5/21		17/5/21
Arrangement for execution of Article 7 of labour treaty	22/5/24	Italy 24/10/24	France 27/1/25	—	—
France-Poland					
Conventions concerning social welfare and relief . .	14/10/20	Poland 11/5/22	France 16/5/22	24/2/23	24/2/23
Arrangements for execution of Article 1 of convention	21/12/29				
Convention concerning invalidity and old-age insurance of wage-earning and salaried employees in the mining industry .	21/12/29	Poland 3/12/31			
France-Saar					
Convention concerning welfare measures for persons from one territory employed in the other territory	27/5/26	France 15/6/26	Saar 25/8/26	—	1/6/26
Italy-Yugoslavia					
Conventions and agreements of Nettuno (appendices F and H: social insurance) .	20/7/25	Italy 31/8/28	Yugoslavia 8/10/28	14/11/28	1/12/28